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CORPORATION CODE

THIRD EDITION

1922

HAMILTON

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Received JAN 5 1923

Michigan. Laws, statutes, etc. Corporation laws.

THE MICHIGAN CORPORATION CODE

INCLUDING

COMMENTARIES AND ANNOTATIONS

TOGETHER WITH

CORPORATION FORMS

THIRD EDITION

ENTIRELY RE-WRITTEN IN CONFORMITY WITH THE PUBLIC ACTS OF 1921

ACCOMPANIED BY

THE MANUFACTURING AND MERCANTILE ACT AS AMENDED AND CONSTRUED TO THE TIME OF ITS REPEAL AND A DIGEST OF THE OPINIONS OF THE ATTORNEY GENERAL RELATING TO THE CORPORATION CODE AND FEE ACTS

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BY

BURRITT HAMILTON

of the Battle Creek Bar and Formerly Twice President of the Michigan State Bar Association

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FRED S. DRAKE
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The annotator acknowledges with deep appreciation valuable assistance afforded him in his work by Major Samuel D. Pepper, Assistant Attorney General, Hon. William W. Potter, President of the Michigan State Bar Association, Professor Edson R. Sunderland of the University of Michigan and Professor Horace G. Wilgus of the University of Michigan. Mr. Fred S. Drake, publisher, is entitled to great credit for numerous valuable suggestions and for tireless efforts to make the arrangement, typography and other features of the work acceptable.

BURRITT HAMILTON.

July 1st, 1922.

PREFACE TO SECOND EDITION

Michigan has been, and is, a peculiarly fertile field for the development of corporation problems. The diversity of her industries; her lumbering, mining, manufacturing; her shipping by land and sea; her wealth employed in adventures; her seasons of almost spectacular industrial promotion; the restless energy of her people—these originative causes have sent to our highest court for solution the main body of practical problems involved in corporation jurisprudence.

The former edition of this work was intended merely as a guide to the construction of the then new Consolidated Corporation Act. That work has been rewritten, rearranged and expanded. In the present edition, an attempt has been made to give practically all the local law on the subject of general private corporations and partnership associations, limited. To this has been added enough new matter from other sources to give the work reasonable completeness. Part I of each division of the present edition announces principles; Part II shows these principles applied; the former represents theory; the latter, practice. The research which made the first possible has made the second valuable. Considerable attention has been devoted to procedure—*what to do and how.* All of the important forms given have been subjected to the test of practical use.

In the citation of Michigan cases, it has been thought best in many instances to cite dictum as well as decisions whenever it was illuminative of the matter in point. It has been deemed sufficient that the dictum of a great court is valuable if not authoritative.

As an advocate who, having consumed his allotted time in closing his case to the jury, recounts with regret the points omitted from his argument, so the writer of these pages—compelled of necessity to surrender his manuscript to the waiting publishers—is keenly conscious of the work's shortcomings. He can but say to a generous profession: "Gentlemen, the verdict rests with you."

BURRITT HAMILTON.

Battle Creek, Michigan, October 4, 1909.

PREFACE TO THE FIRST EDITION

Annotation of the Consolidated Corporation Law of Michigan (Act 232 of 1903, as amended) was suggested by the importance of the act, the questions arising daily in practice under it, and the facility with which it lends itself as a framework about which to arrange the case law of private corporations thus far developed in this state.

The citations herein are chiefly from the Michigan Decisions and the Lawyers' Reports, Annotated—volumes usually found in the working libraries of Michigan lawyers. These authorities have been supplemented by citations from standard text-books.

Special attention is called to the recent decision of the Court of Chancery of New Jersey in the case of Audenried vs. East Coast Milling Co., construing language identical with that of the closing paragraph of Sec. 2 of the Michigan act. The clause interpreted by this case has given rise to widely differing views, hence the judicial determination of its real meaning is of value.

If the arrangement of authorities herein somewhat simplifies the task of lawyers and corporate officers in their work under the act discussed, the purpose of the annotator will have been accomplished. B. H.

Battle Creek, Michigan, 1906.

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PRELIMINARY STATEMENT

(References Are to Annotator's Sections)

When, in the language of Professor Wigmore, the Michigan statutes relating to corporations had "reached the culmination of crude superfluity," the Michigan State Bar Association sought and obtained remedial legislation. At the instance of that organization, Act No. 24 of the Public Acts of 1919 was passed, directing the attorney general to submit to the next legislature "a bill, or bills, to revise, consolidate and simplify the laws of this state relating to corporations." Act No. 84 of the Public Acts of 1921 is the result.

The new act is properly called a "corporation code." It expressly repeals one hundred and one (101) pre-existing acts and merges their essential provisions into a co-ordinated structure. As far as possible, language which had received judicial construction has been retained.

The act (as amended by P. A. 21, First Extra Session, Act No. 20) applies *to all private corporations* now existing, or hereafter organized, in this State, except that the following are not to be deemed within its terms, save "as any specific provision may be made to expressly apply" to them: (§30)

I. Banking corporations,
II. Insurance corporations,
III. Fraternal benefit societies,
IV. Trust, deposit and security companies,
V. Finance corporations,
VI. Building and loan associations,

VII. Summer resort associations,
VIII. Limited partnership associations,
IX. Railroad, bridge and tunnel companies,
X. Union depot companies,
XI. Train railway companies,
XII. Street railway companies,
XIII. Pipe line companies,
XIV. Telegraph companies,
XV. Telephone companies,
XVI. Safety and collateral deposit companies,
XVII. Canal, river and harbor improvement companies,
XVIII. Cemetery, burial and cremation associations,
XIX. Agricultural and horticultural fair societies,
XX. Water power and water supply companies.

(For further details see §31 et seq.)

Classification. All corporations authorized to be formed under the act fall into one of two general classes:

(a) Corporations for pecuniary profit; (§4) or

(b) Non-profit corporations. (§§9, 397)

Trustee corporations and educational corporations may be of either class. (§18)

Ecclesiastical corporations, societies and lodges *must be* of the non-profit class. (§26)

Number of Incorporators. Any corporation authorized by the act (except certain trustee corporations) may be formed by three persons. Any greater number may be joined as organizers, if desired.

Articles of Association. Articles must be *executed in triplicate.* They are now filed, not recorded. Typewritten articles conforming in all respects to the forms prepared by the secretary of state will be accepted, if otherwise satisfactory. Upon approval by the secretary of state, one copy will be filed, and the remaining two copies will be certified and returned to the corporation. One copy so returned is to be filed in the office of the

clerk of the county in which the corporation maintains its principal business office. The remaining copy may be retained by the company as readily available evidence of due incorporation. (§65) The legislature itself provided the general form of articles to be used by ecclesiastical corporations. (§507)

Power to Reject Articles. The secretary of state is expressly required to reject articles which fail to comply with the act. (§101)

New Corporations Must Organize Under This Act. All private corporations hereafter organized under the laws of this State, except the excluded classes, are required to organize under this act. (§26)

Pre-existing Corporations Need Not Reorganize. Every corporation whose act of incorporation has been repealed by the new act, continues under the new act without formal reorganization, and without loss of powers, rights, privileges or immunities. (§671)

Multiple Purposes. In this act the state has departed from its former policy, which generally limited each corporation to a single, major purpose. Multiple purposes are now permitted. (§§4, 72, 397)

Perpetual Charters. Corporations without capital stock, for religious, benevolent, social or fraternal purposes, may be organized without limit of duration, and in that event their terms "shall be deemed perpetual," subject to the constitutional right of alteration, amendment or repeal. Existing corporations of the same class are made perpetual by the act. (§161)

Non-par Shares. Shares of stock without specified par value are authorized. (§290)

Preferred Stock. Within prescribed limits, preferred stock may be given such preferences as "may be deemed advisable." It may be made convertible into common stock, bonds or other securities, at the option of the

holder. (§§264, 281) No rate of preference is prescribed, and the dividends may be cumulative or non-cumulative. Participation beyond the fixed preferences may be provided.

Bonds may be made convertible into stock. (§316)

Non-profit corporations may issue stock. (§§397, 400)

Mortgage. The procedure for mortgaging the property of corporations is made definite. (§§316, 424, 517)

Right of Corporations to Hold Stock in Other Companies. The right of corprations, organized under this act for profit, to hold stock and have representation in other similar companies is expressly given. (§§147, 150)

Guaranty of Bonds. A corporation may guaranty the bonds of any other domestic corporation, in the same general line of business, whose stock is owned by the guarantor corporation. (§319)

Industrial Stock. Provision is made for issue of "industrial stock" to employees in consideration of faithful or continued employment. (§§321, 323, 325)

Welfare Work. By consent of two-thirds of the capital stock, not to exceed 10% of the surplus (or, by unanimous consent, not to exceed 25%) in any year may be devoted to the welfare of employees and of their families. (§327)

Directors' By-laws. The board of directors of profit corporations may enact and enforce by-laws, unless the articles of association provide otherwise. (§219) Directors of non-profit corporations may enact or amend by-laws if authorized so to do by the voting members. (§407)

Restraint of Excessive Salaries and Bonuses. Payment of salaries or bonuses "which would tend to impair the company's business" may be restrained by the courts. (§§332, 333, 334) Creditors are afforded a remedy against the offending directors. (§§332, 335)

Trustee Corporations. New and adequate provisions

are made for the incorporation of trustees under express trusts. (§451) Among other things, this will enable convenient incorporation of common law trust organizations—sometimes called "Massachusetts Trusts."

Co-operative Corporations. A comprehensive code has been prepared for the organization and management of co-operative corporations. (§357) A short code has been provided for such companies as may not require the more elaborate provisions. (§380)

Consolidation of Acts. The numerous prior acts relating to lodges, societies, churches, hospitals, charitable institutions, schools and colleges have been recast into appropriate chapters, reduced to reasonable proportions. (§§426, 442, 451, 470, 473, 475, 482, 489, 506)

Annual Reports. All corporations for profit, except certain public utilities, must file reports with the secretary of state in July or August of each year hereafter, showing their condition as of June 30th last preceding. No special provision is made for companies whose fiscal year ends upon some other date. All must report within one and the same period. (§553 et seq. and §683 et seq.)

All non-profit corporations are required to file reports on or before January 1, 1922; again in the months of July or August, 1924, and in the same months in each third year thereafter. (§§555, 683) Forms will be provided for this purpose by the secretary of state.

Franchise or Privilege Fee. All non-profit corporations are required to pay a privilege fee of $10 each at the time of filing their reports. All profit corporations, except railroad, interurban, telephone, telegraph and foreign insurance companies, are required to pay an annual privilege fee based upon capital stock and surplus. The charge differs under different classifications. (§676 et seq.)

Organization Fee. Non-profit corporations, whether

foreign or domestic, must now pay an organization or admittance fee, as the case may be, of $10. (§676) Domestic profit corporations pay an organization fee of 1 mill upon each dollar of capital stock authorized. (§677) Foreign profit corporations pay an admittance fee at the same rate (§677) upon the basis of property owned and used in Michigan.

Credit for the structure and new phraseology of Act 84 of P. A. '21 is principally due to Major Samuel D. Pepper, Assistant Attorney General, who prepared the bill. Governor Alex. J. Groesbeck, formerly attorney general, rendered important service in formulating, and in encouraging adoption of the act. In several messages to the legislature, Hon. Albert E. Sleeper, while governor, recommended corporation law revision.

The committee on legislation of the Michigan State Bar Association, primarily responsible for the act causing the revision, was composed by Hon. William W. Potter, chairman, Judge Mark W. Stevens, Mr. Walter S. Foster, Mr. Alva M. Cummins and Mr. Edson R. Sunderland. Act 85 of P. A. '21 formed no part of this committee's plan, but was a revenue measure suggested later, by state officials, to meet the financial requirements of the state.

The parts, chapters, subdivisions and sections of the Corporation Code (Act No. 84, P. A. '21, as amended) have been reproduced herein, with the addition of comments and citations. The Corporation Fee and Tax Act (Act No. 85, P. A. '21) has been reproduced in like manner, because the latter act is supplemental to the code. The constitutionality of Act No. 85 has been sustained, but there is little doubt that the subject of franchise taxation will receive further legislative attention.

In Appendix A, Act No. 84 has been reproduced as a whole, with marginal catch lines, and with sectional

references to comments and citations contained in the body of the book.

In Appendix B, Act No. 232, Public Acts 1903, as amended (commonly known as the Manufacturing and Mercantile Act) has been reproduced with citations and sectional references, out of regard for the fact that it remains of some service. Indeed, to those who are familiar with its provisions, it will serve as a convenient, supplemental index to numerous identical, or similar, provisions to be found in the Corporation Code.

It is hoped that the work of the annotator, however hastily and imperfectly performed, may be of some service to the profession in the construction and application of these acts.

THE MICHIGAN CORPORATION CODE

Act No. 84 Public Acts 1921, p. 125.

(References are to annotator's sections)

TITLE

Analysis of the Title.

§1. Title of Act.
§2. Constitutionality of the Act as to Title.
§3. Further Considerations as to Title.

Title.

An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities; to prescribe the conditions upon which corporations may exercise their franchises; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to carry on business within this State; to prescribe penalties for violations of the provisions of this act; and to repeal certain acts and parts of acts relating to corporations.

For title of Act No. 232 of 1903, see Appendix B.

COMMENTARIES ON THE TITLE

§1. Title of the Act.

The title relates to one general subject—private corporations. The text of the act deals with private corporations, and with nothing else. The legislature so understood the measure. It was referred to in the house as "a bill to

codify the corporation laws." House Journal No. 67 of 1921, p. 907.

§2. Constitutionality of the Act as to Title.

Both the constitution of 1850 and the constitution of 1908 contain the provision that, "No law shall embrace more than one object, which shall be expressed in its title." Const. 1850, Art. IV, §20; Const. 1908, Art. V, §21. Judicial applications of the principle through nearly three quarters of a century have made its meaning clear. The provision was designed to prevent embodiment of either unannounced or incongruous objects in a single act.

The leading early case is People v. Mahaney, 13 Mich. 481, 494 (1865), in which Mr. Justice Cooley elucidates the subject in its historical relations. A similar statement is made by Mr. Justice Campbell in Kurtz v. People, 33 Mich. 279, 281 (1876). Under a like constitutional provision, Mr. Justice Sherwood, of the Supreme Court of Missouri, has more recently restated the principle thus: "The evident object of the provision of the organic law relative to the title of an act was to have a title, like a guideboard, indicate the general contents of the bill, and contain but one general subject which might be expressed in a few or a greater number of words. If those words only constitute one general subject, if they do not mislead as to what the bill contains, if they are not designed to cover vicious and incongruous legislation, then the title can stand on its own merits, is an honest title, and does not impinge on constitutional prohibitions." St. Louis v. Weitzel, 130 Mo. 600, 616, 31 S. W. 1045, 1049 (1895), cited with approval in State ex rel. Baker v. Assurance Company of America, (Mo.) 158 S. W. 640, 46 L. R. A. (N. S.) 955, 963 (1913): People v. State Insurance Co., 19 Mich. 392, 398 (1869); People v. Gogak, 205 Mich. 260, 266 (1919); Fremont

Canning Co. v. Waters, 209 Mich. 178, 193 (1920); Home Telephone Co. v. Michigan Railroad Commission, 174 Mich. 219, 228 (1913); Westgate v. Township of Adrian, 161 Mich. 333, 335 (1910); Fortin v. Bay City Traction & Electric Co., 154 Mich. 316, 320 (1908); Soukup v. Van Dyke, 109 Mich. 679, 681 (1896); Boyer v. Grand Rapids Fire Insurance Co., 124 Mich. 455, 461 (1900); Barnard v. McLeod, 114 Mich. 73, 74, 77 (1897); City of Detroit v. Wabash, St. Louis & Pacific Railroad Co., 63 Mich. 712, 713 (1886); Sharer v. Board of Supervisors, 128 Mich. 552, 554 (1901); American Matinee Association v. Secretary of State, 140 Mich. 579, 582 (1905); Loomis v. Rogers, 197 Mich. 265, 273 (1917); Citizens Telephone Co. v. Fuller, 229 U. S. 322, 57 L. ed. 1206, 1215 (1913); Ripley v. Evans, 87 Mich. 217, 230 (1891); Canal Street Gravel Road Co. v. Paas, 95 Mich. 272, 279 (1893).

For decisions holding statutes void for disregard of the constitutional principle under consideration, see M. C. Bullock Manufacturing Co. v. Sunday Lake Iron Mining Co., 132 Mich. 285 (1903), in which it was held that a title relating solely to *domestic* corporations was not sufficiently broad to sustain a provision repealing an act relating to *foreign* corporations; Stewart v. Father Matthew Society, 41 Mich. 67 (1879), holding that "missionary and other benevolent purposes" were not germane to a title limited to "literary and scientific purposes"; Eaton v. Walker, 76 Mich. 579 (1889), holding that a title limited to *manufacturing* purposes was not sufficiently broad to include mercantile business; Township of Ecorse v. Jackson, Ann Arbor & Detroit Railway, 153 Mich. 393 (1908), holding that a title relating to the incorporation, operation and management of railroads, in which the word "railroads" was used in its ordinary and original sense, was not capable of sustaining legislation relating to street railways; Young v.

Moore, 162 Mich, 60 (1910), holding that a title confined to *domestic* corporations would not support a provision for penalizing directors of *foreign* corporations for failure to file annual reports. See also Northwestern Manufacturing Co. v. Wayne Circuit Judge, 58 Mich. 381 (1885).

§3. Further Consideration as to Title.

In considering the constitutional agreement between title and text of the act, other principles are to be remembered:

(a) *Revision and Consolidation.*

Reference to the act shows conclusively that the legislative intent was to build into a single, orderly structure the vital provisions of a multitude of statutes which the act repeals. This purpose is meritorious and is looked upon with favor by the courts. 25 R. C. L. §111, p. 867.

(b) *Regulation.*

The title is broadened by employment of the word "regulation." This is notice of provisions for government and restraint. Fremont Canning Co. v. Waters, 209 Mich. 178, 183 (1920); Home Telephone Co. v. Michigan Railroad Commission, 174 Mich. 219, 228 (1913); Westgate v. Township of Adrian, 161 Mich. 333, 335 (1910); Cote v. Village of Highland Park, 173 Mich. 201, 216 (1912); Osborn v. Charlevoix Circuit Judge, 114 Mich. 655, 658 (1897).

(c) *Presumptions.*

The presumption of law is that the act is constitutional. Every intendment will be construed in the manner most favorable to the validity of the act. Fremont Canning Co. v. Waters, 209 Mich. 178, 182 (1920), 25 R. C. L. §85, p. 838, see also §243, p. 1000; People v. Gansley, 191 Mich. 357, 368 (1916). See also Grimm v. Secretary of State, 137 Mich. 134 (1904), declining to follow Lewis v. Dunne,

134 Cal. 291, 55 L. R. A. 833 (1901), and sustaining Act 232 of 1903.

(d) *Effect of Partial Invalidity.*

The act provides that partial invalidity shall not impair the remainder of the act. Such expressions of the legislative will are usually given effect by the courts.

This doctrine is stated by Mr. Justice Fullerton of the Supreme Court of Washington, in State of Washington v. Clausen, 65 Wash. 156, 117 Pac. 1101, 37 L. R. A. (N. S.) 466, 482 (1911): "It is . . . . expressly provided" (in the act under consideration) "that the adjudication of invalidity of any part of the act shall not affect the validity of the act as a whole, or any part thereof. This means that the legislature intended the act to be enforced as far as it may be, even though it might not be valid in its entirety. It was competent for the legislature to so provide. Anything it could have eliminated itself, and left an operative act, can be eliminated by the courts without destroying the entire act, if it is the will of the legislature that the remaining parts of the act shall stand after such elimination. See also 6 R. C. L. §122, p. 125.

(e) *Reluctance of Courts to Pass Upon Constitutional Questions.*

It is a settled policy of the courts not to consider or determine constitutional questions when other decisive questions are raised by the record and dispose of the case. North Michigan Water Co. v. Escanaba, 199 Mich. 286, 307 (1917); People v. Quider, 172 Mich. 280, 289 (1912); Powell v. Eldred, 39 Mich. 552, 553 (1878). See also Chicago & Grand Trunk R. Co. v. Wellman, 143 U. S. 339, 36 L. ed. 176, 180 (1891); 8 Cyc. 798.

It is believed that the present act will not be found to offend the constitutional provisions as to title.

The People of the State of Michigan enact:

PART I

FORMATION OF CORPORATIONS

CHAPTER 1

CLASSIFICATION AND PURPOSES

(References are to annotator's sections.)

Analysis of Chapter 1.

§ 4. Incorporators of Profit Companies.
§ 5. Incorporators Must Be Natural Persons.
§ 6. Incorporators Must Be Competent to Contract.
§ 7. Multiple Purposes.
§ 8. Any Lawful Business.
§ 9. Incorporators of Non-Profit Companies.
§10. The Non-Profit Classification.
§11. Direct and Indirect Pecuniary Profit.
§12. Trustee Organizations.
§13. Corporate Trustees.
§14. The Trustee Corporation.
§15. Strictly Trustee Corporations.
§16. Quasi-Trustee Corporations.
§17. When Trustee May Incorporate.
§18. Institutions of Learning.
§19. Educational Corporations.
§20. Not Applicable to Certain Institutions.
§21. Institutions Embraced.
§22. Religious Corporations.
§23. Ecclesiastical Corporations.
§24. Secret Organizations.
§25. Secret Societies.
§26. Articles—Declaration of Classification.
§27. This Act Exclusive within Its Scope.
§28. Compatible Purposes.
§29. Rejection of Articles by Secretary of State.
§30. Excluded Corporations.
§31. Banking Corporations.
§32. Industrial Banks.
§33. Insurance Corporations.
§34. Fraternal Benefit Societies.
§35. Trust, Deposit and Security Companies.
§36. Building and Loan Associations.

§37. Summer Resort Associations.
§38. Limited Partnership Associations.
§39. Excluded Public Utility Companies.
§40. List of Companies Excluded.
§41. Safety and Collateral Deposit Companies.
§42. Canal, River and Harbor Improvement Companies.
§43. Cemetery, Burial and Cremation Associations.
§44. Agricultural and Horticultural Fair Societies.
§45. Pipe Line Companies.
§46. Water Power and Water Supply Companies.
§47. Reason for Exclusion.
§48. Other Excluded Companies.
§49. Acts Unaffected.
§50. Rule of Construction.
§51. Notice by Publication.
§52. Articles of Incorporation and Articles of Association.
§53. Words and Phrases.
§54. Directors and Trustees.
§55. Company, Association and Society.
§56. Officers Distinguished from Directors.
§57. Officers.
§58. Directors.
§59. Capital Stock.
§60. Further Rules of Construction.
§61. Main Michigan Office.
§62. Titles Not Limitations.
§63. Unconstitutionality.

PART I, CHAPTER 1, SECTION 1

§4. Incorporators of Profit Companies.

Incorporators.

Any number of persons,[1] not less than three, may incorporate for the purpose of carrying on any lawful business [2] for pecuniary gain. Such corporations shall be known as "Corporations for pecuniary profit."

For corresponding section of Act No. 232 of 1903, see Appendix B (9017).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART I

§5. Incorporators Must Be Natural Persons.

1. May corporations join as incorporators? It is true that "the word 'person' may extend and be applied to bodies

politic and corporate, as well as to individuals." 1 C. L. 1915, (3), subhead 12. It is true that statutes applicable to "persons" will be construed to include corporations if such construction is consistent with the manifest legislative intent. Turnbull v. Prentiss Lumber Co., 55 Mich. 387, 393 (1884). But it is held that corporations cannot become incorporators, unless such an intention is clearly expressed by the law. Hochgraef v. Milward, 38 Mich. 469, 473 (1878); 1 Fletcher Cyc. Corp. §107, p. 154. The presumption is, that natural persons are intended, and there is nothing in the act to overcome the presumption.

§6. Incorporators Must Be Competent to Contract.

The articles of association are a contract between the incorporators and the corporation formed. Dexter & Mason Plankroad Co. v. Millerd, 3 Mich. 91, 99 (1854); Carson v. Arctic Mining Co., 5 Mich. 288, 292 (1858); Valentine v. Berrien Springs Water Power Co., 128 Mich. 280, 294 (1901); Peninsular Savings Bank v. Black Flag Stove Polish Co., 105 Mich. 535 (1895); St. Johns Mfg. Co. v. Munger, 106 Mich. 90, 95 (1895); Foote v. Greilick, 166 Mich. 636, 644 (1911); Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co., 170 Mich. 205, 215 (1912); Campbell v. Raven, 176 Mich. 208, 214 (1913); Olson Mfg. Co. v. Rex Motor Co., 203 Mich. 470, 481 (1918). The articles are also a material portion of a compact, in the nature of a contract, between the incorporators and the State. Goodspeed v. Wayne Circuit Judge, 199 Mich. 273, 279 (1917). It follows that contractual capacity is a requisite of an incorporator. An *infant* is ineligible. Re Globe Mutual Benefit Association, 135 N. Y. 280, 17 L. R. A. 547, 549 (1892). But, in this State, the common law disability of a married woman having been removed (3 C. L. 1915 §11485) she may

become a party to articles of association, "as if she were unmarried." 1 Fletcher Cyc. Corp. §106, p. 152; 7 R. C. L. §31, p. 53.

§7. Multiple Purposes.

2. Act 232 of 1903 is repealed. (Part V, Chap. 3, §612.) A broader act is substituted in its stead.

It was held, under Act 232 of 1903, that a corporation could not be formed to engage in *more than one* of the several purposes authorized by the act, except that manufacturing and mercantile purposes might be joined, as the act expressly provided. Annual Report Attorney General (Fellows) 1913, p. 217. The reason for this ruling undoubtedly was, that Act 232 of 1903 was a consolidation of nine prior acts, passed at different times for nine different purposes, and that, in the consolidated act, these purposes were named in the alternative, separated by the disjunctive conjunction "or." Under such circumstances, there is abundant authority for saying that a single corporation could not be formed for more than one such purpose. 10 Cyc. 161; The Isle Royale Land Corporation v. Osmun, 76 Mich. 162 (1889); 1 Fletcher Cyc. Corp. §117, p. 201.

The new act is relieved of this restriction. It does not state alternative purposes for which corporations for pecuniary profit may be formed. It contemplates *multiple purposes*. (Part I, Chap. 2, §72.) The business undertaken may be as comprehensive as is desired, so long as it is lawful and does not involve purposes excluded by the act. 1 Machen Corp. §§ 49, 50, pp. 46, 47. The plain words "any lawful business" are not to be narrowly construed. Lindsay & Phelps Co., 176 U. S. 126, 44 L. ed. 400, 405 (1900). For example, a corporation may lawfully engage in manufacturing, mining, merchandising,

publishing, general contracting, engineering, accounting, farming, dealing in city lots. It may own and operate a factory in Michigan, a hotel in California, a cotton mill in Texas, a saw mill in Alabama and a citrus grove in Florida. Except as to purposes excluded by the express terms of the act, the activities of a corporation organized under this law may be as numerous and varied as those which might be pursued by an individual or partnership, provided such purposes have been announced in the articles of association.

§8. Any Lawful Business.

But the scope of the expression "any lawful business for pecuniary gain" is not without limitations.

(a) It is limited by §30 of this chapter, which excludes a considerable number of lawful activities from the scope of the act; and

(b) It is limited by the principle which denies corporations the right to practice the learned professions.

A corporation cannot engage in the practice of law, Re Cooperative Law Co., 198 N. Y. 479, 32 L. R. A. (N. S.) 55 (1910). Nor may a corporation be licensed to practice medicine. 1 Fletcher Cyc. Corp. §54, p. 71; State Electro-Medical Institute v. State, 74 Neb. 40, 12 Ann. Cas. 673 (1905).

(c) It is expressly limited by the word *"lawful."* However broad the powers conferred may be, "the State has said: 'You shall not exercise them so as to set at defiance any statute lawfully enacted by the Congress of the United States, or any statute lawfully enacted by any state wherein you see fit to exercise your powers.'" United States v. Northern Securities Co., 120 Fed. 721, 727 (1903), affirmed in 193 U. S. 196, 48 L. ed. 679 (1904). See also Detroit Schuetzen Bund v. Detroit Agitations Verein, 44 Mich. 313

(1880); Richardson v. Buhl, 77 Mich. 632, 658 (1889) 6 L. R. A. 457, 43 N. W. 1102.

PART I, CHAPTER 1, SECTION 2

§9. Incorporators of Non-Profit Companies.

Incorporators for Non-Profit.

Any number of persons, not less than three, may incorporate for the purpose of carrying out any lawful purpose or object, not involving pecuniary gain or profit for its members or associates.[3] Such corporations shall be known in law as "non-profit corporations."[4]

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 1, PART I

§10. The Non-Profit Classification.

3. The status of a corporation is determined by the objects announced in its articles of association. Van Etten v. Eaton, 19 Mich. 186, 194 (1869); Attorney General v. Lorman, 59 Mich. 157, 162 (1886); Detroit Driving Club v. Fitzgerald, 109 Mich. 670, 675 (1896); German Corporation v. Negaunee German Aid Society, 172 Mich. 650, 656 (1912); People v. Gansley, 191 Mich. 357, 373 (1916).

The present act (Part III, Chap. 1, §397) supersedes and repeals act 171 of 1903 and sweeps into the non-profit class, "corporations whose purposes do not include the transaction of commercial or other business for a *direct* pecuniary profit to the members or stockholders. Particularizing (Id. §421) the non-profit classification is extended to,

(a) Clubs,

(b) Boards of trade and commerce,

(c) Bar associations,
(d) Medical associations,
(e) Other professional associations,
(f) Associations of persons engaged in the same, or allied, trades, occupations or industries,
(g) Scientific societies,
(h) Sociological societies,
(i) Historical societies,
(j) Political societies,
(k) Literary societies,
(l) Art societies,
(m) Humane societies,
(n) Any other society of the same general character as those enumerated,
(o) Relief societies,
(p) Burial societies,
(q) Sickness or burial benefit societies paying not more than $150 to any one member, and
(r) Societies for cooperative buying and selling.

§11. Direct and Indirect Pecuniary Profit.

4. Upon principle, a corporation may be of the non-profit class, even though it may derive substantial profit from its properties and activities. American Matinee Association v. Secretary of State, 140 Mich. 579, 581 (1905). The non-profit concept is not incompatible with good management and sufficient resources for efficiency.

The present act (Part III, Chap. 1, §413) permits invested capital. The amount must not exceed the estimated requirements of the corporation for five years, "aside from annual or other periodical contributions from sources other than the revenue derived from annual membership fees." This amount is limited to $500,000 in any event, except under certain circumstances (Id. §413).

While the members of a non-profit corporation are denied *direct* profit, it is obvious that they, or some of them, may receive profit from the corporation indirectly.

(a) The act contemplates that officers may be paid salaries (Id. §413). No doubt these salaries must be paid in good faith, and not as a subterfuge evasive of the spirit of the act.

(b) An officer, or member, acting fairly and in good faith, may sell to, or buy from, such a corporation with the same advantages that would flow from like transactions with a private individual. The thing inhibited is the conduct of the business by the corporation with a direct view to corporate profit to be distributed to the members, presently or eventually (§397).

(c) Upon dissolution, the property of the corporation is to be liquidated, the debts paid, and the residue distributed to the then members (Id. §400). If a surplus has been accumulated, the members are entitled to it. Stamm v. The Northwestern Mutual Benefit Association, 65 Mich. 317, 328 (1887); Brown v. The Pontiac Mining Co., 105 Mich. 653, 657 (1895); Hopkins v. Crossly, 138 Mich. 561, 567 (1904).

PART 1, CHAPTER 1, SECTION 3

§12. Trustee Organizations.

Trustee Corporations.

Corporations may be formed to carry out the terms of any written declaration, deed or testament making donations, grants, gifts or devises in trust for specific lawful purposes. Such corporations shall be known in law as "Trustee Corporations," [5] which term may also embrace other corporations as hereinafter provided for in this act.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 1, PART I

§13. Corporate Trustees.

5. It has long been settled that a corporation may hold in trust such property as it has power to hold in its own right. Irrespective of the statute, its power to act, within the field thus limited, is the same as that of individuals. Maynard v. Woodard, 36 Mich. 423, 426 (1877); White v. Rice, 112 Mich. 403, 408 (1897); 2 Fletcher Cyc. Corp., §933, p. 1883; 3 Thomp. Corp., (2 ed.) §2374, p. 294. See also Lounsbury v. Trustees of Square Lake Burial Association, 170 Mich. 645 (1912); In re More's Estate, 179 Mich. 237 (1914); Angell & Ames Corp., §166, p. 133.

§14. The Trustee Corporation.

Primarily, a trustee corporation is one formed to carry out the provisions of any *express* trust for *religious, charitable, benevolent, educational* or *public benefit purposes* (Part IV, Chap. 1, §451). The trust may arise through any lawful *deed, grant, agreement* or *will* (Id. §455).

But for practical purposes, the trustee corporations authorized by the act may be classified as:

I. Corporations to administer express trusts;

II. Corporations for charitable purposes founded and sustained principally by donations not made under any trust instrument; and

III. Quasi-trustee corporations.

§15. Strictly Trustee Corporations.

Such corporations (i. e. corporations formed to execute express trusts) may be organized for:

(a) Charitable purposes,

(b) Religious purposes,

(c) Educational purposes,

(d) Benevolent purposes, and

(e) Other purposes required by the trust instrument and not inconsistent with the act (§451).

Specific provision is made for trustee corporations to hold and manage the property of

Hospitals (§470 et seq.),

Charitable asylums and refuges (Id.),

Fraternal homes (§473 et seq.),

Associations of religious organizations (§475 et seq.),

Religious organizations (§517).

Such property may, or may not, be derived from an express trust (Id).

§16. Quasi-Trustee Corporations.

These may be formed "for the purpose of receiving a fund, or funds, and applying the income thereof to promote the preservation and perpetuation of persons and objects of historical and natural interest" (§482).

The activities of such corporations may include:

(a) Preservation of forests,

(b) Establishment and maintenance of parks,

(c) Establishment and Preservation of Museums,

(d) Collection and preservation of historical documents, data, research and publications,

(e) Aid to any such objects already established, and

(f) Procurement and management of scholarship funds and student's aid funds for the assistance of students in any public schools or colleges of this State, or in the University of Michigan (§§482, 488).

§17. When Trustees May Incorporate.

The statute (Part IV, Chap. I, §451) provides, "That declarations of trust shall not be sufficient in themselves

to authorize the trustees named therein to assume corporate powers." In other words, a corporation cannot be set up by will. The grantor or testator may not abridge or usurp the sovereign authority of the State, from which all corporate rights must be derived. Detroit Schuetzen Bund v. Detroit Agitations Verein, 44 Mich. 313, 315 (1880); Mason v. Perkins, 73 Mich. 303, 312 (1889).

The statute does not require that the trust instrument shall expressly authorize or direct incorporation. The permission to incorporate is given by the law of the State, and that is sufficient. *Incorporation is merely an instrumentality of administration.* The trust remains unchanged. The trustees are "held to the same degree of responsibility and accountability . . . . . as if not incorporated," except under certain circumstances (§464).

No doubt a grantor, or a testator, may bind his trustees by an express instruction not to incorporate. This would violate no principle. The act requires no one to avail himself of its benefits.

The right to incorporate is derived from the statute, and not from the trust instrument. To exercise this right, the character of the trust and the number of the trustees must be in harmony with some enabling provision of the act (§451). These provisions may be summarized as follows:

I. Three or more trustees under an express trust, holding (a) a fund of $1,000 or more, or (b) receiving in trust an annual income of $1,000 or more, may incorporate (§455);

II. Three or more trustees, under an express trust, holding a fund of $5,000 or more "for the purpose of founding or endowing a hospital or other charitable asylum" may incorporate. Unless restricted by the trust instrument, they may join other contributors in the organization (§470);

III. Three or more persons (not necessarily trustees) may incorporate as a trustee corporation for any purpose mentioned in §470 where the charitable institution to be founded "is to be constructed, equipped and maintained principally by donations *not made under any trust deed or other instrument* declaring the uses and purposes to which such property shall be devoted" (§470);

IV. Five or more persons, chosen from one or more charitable, fraternal or religious bodies, pursuant to the provisions of a trust instrument, and constituting a board of control of a charitable institution of this State, whose property is vested in one or more trustees under such instrument, may incorporate as a trustee corporation (§473);

V. Not less than three nor more than nine trustees elected by associated religious bodies, to take charge of any endowment or other property of such bodies, may become a trustee corporation (§475); and

VI. Not less than three persons (not necessarily trustees) may become incorporated as a quasi-trustee corporation, for the purposes hereinbefore mentioned under the caption "Quasi-Trustee Corporations" (§482).

PART I, CHAPTER 1, SECTION 4

§18. Institutions of Learning.

Educational Corporations

Any number of persons, not less than three, may incorporate for the purpose of conducting a school, academy, college or other institution of learning, where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. All such corporations shall be known in law as "Educational Corporations."[6] Nothing herein shall be construed as preventing any such corporation from being deemed a corporation for pecuniary

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profit or a trustee corporation in appropriate cases: *Provided,* That every such corporation shall comply with the provisions of this act made applicable to educational corporations in addition to complying with such provisions of this act as apply to corporations for pecuniary profit or trustee corporations or both as the case may be.[7]

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 1, PART I

§19. Educational Corporations.

6. An educational corporation may be:
(a) Non-profit,
(b) For profit,
(c) Trustee,

or a combination of trustee with either of the other types. Where the dual character of *profit-educational* corporation is adopted, the provisions applicable to corporations for pecuniary profit, as well as those applicable to educational corporations, must be observed. Where the triple character of *trustee-profit-educational* corporation is assumed, the provisions of the act applicable to the three different classes of corporations must be satisfied (§18).

Three classifications (Part IV, Chap. 2, §491) are provided:

I. Educational corporations having an authorized capital of not less than $100,000, of which at least 50% must be paid up. Such corporations are authorized to establish and conduct general colleges, universities or other institutions of higher learning (including preparatory schools) and to confer degrees (Id. §493).

II. Educational corporations having an authorized capital of less than $100,000 and more than $5,000, of which

at least 50% must be paid up (§491). Such corporations are authorized to establish and conduct special colleges, seminaries, academies or preparatory schools, but not general colleges or universities (Id.). This class expressly includes kindergarten institutions formed under Act 359 of 1913, now repealed (§493, c).

III. Denominational educational corporations (§491). The following named existing corporations are brought under this classification of the act:

(a) Ursuline academies, organized under Act 135 of 1899, repealed;

(b) Ecclesiastical seminaries organized under Act 121 of 1915, repealed;

(c) Evangelical Lutheran deaf mute institutions, organized under Act 28 of 1901, repealed;

(d) Industrial and charitable schools founded under Act 135 of 1867, repealed; and

(e) Such other educational schools, colleges and institutions as may be formed under this act. (Part IV, Chap. 2, §493.)

§20. Not Applicable to Certain Institutions.

7. Obviously the act does not refer to the University of Michigan or the Michigan Agricultural College, both of which hold charters directly from the people, through the State constitution. Mich. Const. 1908, Art. XI, §4 and §7. Within the scope of their functions, these public institutions are beyond domination by the legislature, and are "the highest form of juristic persons known to the law—constitutional corporations of independent authority." See opinion by Mr. Justice Steere in Regents v. Auditor General, 167 Mich. 444, 450 (1911). See also, People v. Regents, 4 Mich. 104 (1856); People v. Regents, 18 Mich. 469 (1869); People v. Regents, 30 Mich. 473 (1874);

Weinberg v. Regents, 97 Mich. 246 (1893); Sterling v. Regents, 110 Mich. 369 (1896). As to Michigan Agricultural College, see Bauer v. State Board of Agriculture, 164 Mich. 415 (1911); State Board of Agriculture v. Auditor General, 180 Mich. 349 (1914); Agler v. Michigan Agricultural College, 181 Mich. 559 (1914). Neither does the act apply to any other educational institutions forming a part of the State's system of public education. "They are governmental agencies, and it is, to say the least, doubtful if they are in any respect anything else, or have any rights that can be called private." Mr. Chief Justice Hooker, in Attorney General v. Lowrey, 131 Mich. 639, 643 (1902), affirmed in 199 U. S. 232, 50 L. ed. 167, 170 (1905); Richter v. Cordes, 100 Mich. 278 (1894); People v. Howlett, 94 Mich. 165 (1892); Mich. Const. 1908, Art. XI. Nevertheless the superintendent of public instruction is given visitorial powers in relation to all educational institutions established under this act (Part IV, Chap. 2, §502) and the trustees are required to report to him annually.

§21. Institutions Embraced.

Clearly the act applies to all privately managed (as distinguished from publicly managed) incorporated educational institutions of the State. Its terms are sufficiently broad to embrace so called "correspondence schools," which, it may be observed, are normally institutions for profit, whose activities, in disseminating instruction by mail, may constitute interstate commerce. International Text Book Co. v. Pigg, 217 U. S. 91, 54 L. ed. 678, 27 L. R. A. (N. S.) 493 (1910).

Part I, Chapter 1, Section 5

§22. Religious Corporations.

Ecclesiastical

Any number of persons, not less than three,

Corporations.

may incorporate for the purpose of establishing a church organization to be composed in each case of persons subscribing in common to particular creeds or religious beliefs and the teaching and spreading of their religious beliefs and principles. All such corporations shall be known in law as "Ecclesiastical Corporations." [8]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 1, PART I

§23. Ecclesiastical Corporations.

8. In the expression "ecclesiastical corporations," we have an ancient phrase with a modern meaning. It will be remembered that in Blackstone's time all corporations were said to be either "ecclesiastical" or "lay." (I Blackstone's Comm. 470.) "Strictly speaking there are no ecclesiastical corporations in the United States, in the proper sense of the term, there being no established church." (1 Fletcher Cyc. Corp. §63, p. 84; 1 Thomp. Corp. 2 ed. §16, p. 20; 1 Purdy's Beach Corp. §12, p. 14; Marshall Corp. §10, p. 45.) Paradoxical as it may seem, the "ecclesiastical corporations" authorized by the act are *lay* corporations.

The act applies to "churches and societies founded upon new doctrines and beliefs as well as to those already established and practiced" (Part IV, Chap. 3, Sub. 1, §506). It is to be "liberally construed in the interests of religion and morality" (Id. §525). "Laws are made for the government of actions, and while they cannot interfere with mere religious belief and opinions, they may with practices." Mr. Chief Justice Waite, in Reynolds v. United States, 98 U. S. 145, 25 L. ed. 244 (1879).

The act applies to "any church, denominational unit, or church society" (Id. §506), but does not apply to subor-

dinate organizations, such as Sunday schools and Bible classes. These may be organized as non-profit corporations (Id. §516).

The by-laws may prescribe "the qualifications of members; the manner in which they shall be admitted, suspended, or expelled" (Id. §510). But, in the absence of a provision to the contrary in the articles or by-laws, the members of the corporation need not be professors of any religion or members of any church. Hardin v. Trustees of the Second Baptist Church, 51 Mich. 137, 138 (1883).

As stated by Mr. Chief Justice McGrath: "It must be borne in mind that there are really two associations here —one a voluntary association, with entirely independent activities, deriving its authority, not from the statute, but from an ecclesiastical body; the other an incorporated body, deriving its power from the statute." The statute has nothing to do with determination of the qualifications, admission, or of membership in the church. Buettner v. Wayne Circuit Judge, 100 Mich. 179, 180 (1894). The church and the church corporation are separate and distinct, however coordinated. The former is religious: the latter temporal; the former deals with doctrine, conduct and belief: the latter controls property. Wilson v. Livingston, 99 Mich. 594, 603 (1894); Bruce v. Central Methodist Episcopal Church, 147 Mich. 230, 234 (1907).

PART I, CHAPTER 1, SECTION 6

§24. Secret Organizations.

Secret Societies.

Any number of persons, not less than three, may become incorporated for the purpose of forming a secret society or lodge, for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law.[9]

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 1, PART I

§25. Secret Societies.

9. Section 24 of this chapter is designed to embrace all secret societies. The details are worked out in Chapter 2 of Part III (§426 et seq.), which supersedes a multitude of prior statutes upon this subject. That chapter is to be construed and applied consistently with the provisions relating to non-profit, educational and trustee corporations. The phraseology of the chapter is new.

PART I, CHAPTER 1, SECTION 7

§26. Articles—Declaration of Classification.

Act Exclusive.

No corporation shall hereafter be formed in this State under any law in existence prior to the passage of this act, excepting corporations formed for a purpose expressly excluded or otherwise exempted from the provisions hereof.[10] The articles of incorporation shall in every case declare under which of the foregoing sections of this chapter such corporation intends to proceed, and no such articles shall be filed by the Secretary of State unless such declaration is contained therein. A declaration to proceed under sections 2, 5, or 6 of this chapter shall be deemed incompatible with a declaration to proceed under section 1 hereof,[11] and any articles of incorporation containing incompatible declarations under this section shall be rejected by the Secretary of State.[12]

Declaration.

For corresponding provision of Act 232 of 1903, see Appendix B (9052).

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 1, PART I

§27. This Act Exclusive within Its Scope.

10. It is within the power of the legislature to indicate the particular act under which a certain class, or certain classes, of corporations must organize. "No corporation can exist except by force of express law." Detroit Schuetzen Bund v Detroit Agitations Verein, 44 Mich. 313, 315 (1880); Doyle v. Mizner, 42 Mich. 332, 337 (1879); Mason v. Perkins, 73 Mich. 303, 312 (1889).

§28. Compatible Purposes.

11. A profit corporation may be for any lawful profit-making purpose not excluded by the act, and may involve

(a) Educational purposes (§18),
(b) Trustee purposes (§§451, 455),
(c) Educational and trustee purposes (§18); but it cannot be
(a) Non-profit (§§9, 26),
(b) Ecclesiastical (§§22, 26), or
(c) Social (§§24 and 26).

A non-profit corporation may be formed for any non-profit purpose not excluded by the act, and may involve

(a) Educational purposes (§§18, 489),
(b) Social purposes (§§24, 26, 426),
(c) Promotion of public welfare (§§482, 485),
(d) Centralization of religious bodies (§§24, 26, 506),
(e) Religious organizations not churches (§516).

§29. Rejection of Articles by Secretary of State.

12. Even in the absence of statutory authority for rejec-

tion of articles, it has been held that, where such articles fail to conform to the requirements of law, the secretary of state is justified in rejecting them. Jenkins v. Osmun, 79 Mich. 305 (1890); Isle Royale Land Co. v. Secretary of State, 76 Mich. 163 (1889); Grimm v. Secretary of State, 137 Mich. 134 (1904).

PART I, CHAPTER 1, SECTION 8

§30. Excluded Corporations.

Excluded Corporations.

The provisions of this act shall not be construed to apply to banking corporations,[13] industrial banks,[14] insurance corporations,[15] fraternal benefit societies,[16] trust, deposit and security companies,[17] building and loan associations,[18] summer resort associations,[19] limited partnership associations,[20] corporations organized or to be organized under chapters[21] one hundred fifty-seven, one hundred sixty, one hundred sixty-one, one hundred sixty-two, one hundred sixty-three, one hundred sixty-eight or one hundred sixty-nine of the Compiled Laws of nineteen hundred fifteen,[22] safety and collateral deposit companies,[23] canal, river and harbor improvement companies,[24] cemetery, burial and cremation associations,[25] agricultural and horticultural fair societies,[26] pipe line companies,[27] or to water power and water supplying companies,[28] excepting as any specific provision in this act may be made to expressly apply to any of the said classes of corporations.[29] (As amended by P. A. '21, First Extra Session, Act No. 20.)

For corresponding provision of Act 232 of 1903, see Appendix B (9051).

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 1, PART I

§31. Banking Corporations.

13. See 2 C. L. 1915 (7967), et. seq., also Pub. Acts 1917, pages 38, 486 and 740; also Pub. Acts 1919, pages 28, 37, 39, 49, 136, 660.

§32. Industrial Banks.

14. See Act No. 296, Pub. Acts 1917, p. 732, and Pub. Acts 1919, pages 296 and 757.

§33. Insurance Corporations.

15. See codification of laws in Act No. 256, Pub. Acts 1917, p. 540 to 672, prepared by Samuel D. Pepper, assistant attorney general collaborating with Hon. John T. Winship, then commissioner of insurance. Amended by Pub. Acts 1919, pages 20, 245, 247, 412, 634, 636, 729.

§34. Fraternal Benefit Societies.

16. A fraternal benefit society is "any corporation, society, order or voluntary association, without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries, and not for profit, and having a lodge system with ritualistic form of government, and which shall make provision for the payment of benefits in accordance with Act No. 256, Pub. Acts 1917, Part 3, Chap. IV, §1, p. 616."

§35. Trust, Deposit and Security Companies.

17. See 2 C. L. 1915 (8044), et. seq. For decision holding that national banks may not exercise trust company powers

in Michigan, see Attorney General, ex rel. Union Trust Co. v. First National Bank of Bay City, 192 Mich. 640 (1916), *reversed* in 244 U. S. 416, 61 L. ed. 1233 (1916).

§36. Building and Loan Associations.

18. See 2 C. L. 1915 (995), et seq.

§37. Summer Resort Associations.

19. See Chapter 192, 2 C. L. 1915 (10034), et seq.

§38. Limited Partnership Associations.

20. See Chapter 151, 2 C. L. 1915 (7950), et seq.

§39. Excluded Public Utility Companies.

21. As originally adopted, the act excluded, "railroad companies, and other common carriers under jurisdiction of the Michigan Public Utilities Commission, or any other state or public service commission or body succeeding to such Michigan Public Utilities Commission." By amendment passed June 9, 1921, this phraseology was changed to the more definite designation of excluded companies now employed.

§40. List of Companies Excluded.

22. The companies excluded from the operation of the act by reference to chapters of the Compiled Laws of 1915 are as follows:

Chapter 157. Railroad, bridge and tunnel companies,
Chapter 160. Union depot companies,
Chapter 161. Train railway companies,
Chapter 162. Street railway companies,

Chapter 163. Pipe line companies,
Chapter 168. Telegraph companies, and
Chapter 169. Telephone companies.

It is a matter of common knowledge that telephone companies in this state are classed as common carriers. This is by virtue of an express statute. 2 C. L. 1915, (6689), City of Owosso v. Union Telephone Co., 185 Mich. 349, 354 (1915). That they would not be so classified in the absence of such statute, see Birkett v. Western Union Telegraph Co., 103 Mich. 361, 364 (1894); Western Union Telegraph Co. v. Carew, 15 Mich. 525, 532 (1867); 26 R. C. L. §6, p. 487.

§41. Safety and Collateral Deposit Companies.

23. 2 C. L. 1915, §8078, et seq.

§42. Canal, River and Harbor Improvement Companies.

24. 2 C. L. 1915, Chap. 170 (8727), et seq., and Chap. 171 (8822), et seq.

§43. Cemetery, Burial and Cremation Associations.

25. 2 C. L. 1915, Chap. 212 (11122), et seq.

§44. Agricultural and Horticultural Fair Societies.

26. 2 C. L. 1915, Chap. 149 (7815), et seq. In general, though such associations differ from ordinary commercial corporations, they are classified as private corporations Ismon v. Loder, 135 Mich. 345, 350 (1904), notwithstanding the holding in Kent County Agricultural Society v. Houseman, 81 Mich. 609, 615 (1890) classifying them as "municipal" within the meaning of Section 11, Article

13 of the constitution of 1850 (section 3, article XII, constitution of 1908).

§45. Pipe Line Companies.

27. 2 C. L. 1915, Chap. 163, (8587) et seq.

§46. Water Power and Water Supplying Companies.

28. 2 C. L. 1915, Chap. 172, (8867) et seq.

§47. Reason for Exclusion.

The existing statutes for the purposes enumerated in notes 13 to 28 inclusive, are *retained because they embody special features not readily adaptable to a general code.*

§48. Other Excluded Companies.

29. Specific provisions applicable to many of the companies excluded from the general operation of the act will be found in Part 5, Chap. 2, relating to annual reports. (§553 et seq.)

PART I, CHAPTER 1, SECTION 9

§49. Acts Unaffected.

Saving Clause.

Nothing in this act contained shall be construed to limit or restrict the provisions of Act No. 46 of the Public Acts of 1915, known as the "Securities Act," nor Act No. 103 of the Public Acts of 1913, known as the "Uniform Stock Transfer Act," nor Act No. 314 of the Public Acts of 1915, known as the "Judicature Act." [30]

(Note Act 106 of 1913, instead of Act 103 of 1913, is obviously intended.)

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 1, PART I

§50. Rule of Construction.

30. This section (§9) affords a definite rule of construction. Instead of resting upon the principle that repeals by implication are not favored by the courts [Lundstrom v. Township of Elsworth, 196 Mich. 502, 511 (1917), Lake v. Village of Cedar Springs, 162 Mich. 569, 570 (1910); People v. Thompson, 161 Mich. 391, 395 (1910); Tillotson v. City of Saginaw, 94 Mich. 240, 244 (1892); People v. Hanrahan, 75 Mich. 611, 622 (1889)] the act resolves all doubt by directly expressing the intent that the new act shall not encroach upon the Securities, Stock Transfer or Judicature Acts. The expressed intent is the law. Parsons v. Wayne Circuit Judge, 37 Mich. 287, 289 (1877); Barstow v. Smith, Walker Ch. 394, 396 (1844); Hopkins v. Sanders, 172 Mich. 227, 236 (1912). So far as this act, and the acts named, can stand together without conflict, that construction will be adopted. In re Kreiner, 156 Mich. 296, 298 (1909). But when there is conflict, the specialized acts control. This is true upon principle, as well as by force of the legislative declaration. Edwards v. Auditor General, 161 Mich. 639, 644 (1910); City of Lansing v. Board of State Auditors, 111 Mich. 327, 334 (1896); Regents of the University of Michigan v. Auditor General, 109 Mich. 134, 137 (1896). "It is a general rule of construction that, where an act is passed (like the Securities, Stock Transfer or Judicature Acts) for a particular purpose, it is not abrogated by general legislation, sufficiently broad to include it."

PART I, CHAPTER 1, SECTION 10

§51. Notice by Publication.

Published Notice.

Definitions and Rules of Interpretation. Whenever in this act any notice is required to be inserted in a newspaper published in the county seat or in the township, village or city where the corporation concerned has its office or its principal place of business, and there shall be no such newspaper published therein, then such notice may be inserted in any newspaper having general circulation in such county, or otherwise shall be inserted in some newspaper published in an adjoining county. The term "articles" as used throughout this act, shall be construed to mean "articles of incorporation" or "articles of association," which terms shall themselves be construed to be synonymous.[31]

For corresponding provision of Act 232 of 1903, see Appendix B (9019).

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART I

§52. Articles of Incorporation and Articles of Association.

31. The term "articles of association" has been subjected to criticism upon the ground that it is ambiguous. In England the signification of the expression is a compact for internal corporate government, analogous to by-laws. (1 Machen Corp. §31, p. 31.) The words "articles of association" have been used so long and so frequently in Michigan statutes that their meaning is very definite.

In the New Jersey (Dill Corp. p. 16) and Delaware

(Gen. Corp. Law 1915) statutes, the articles are called a "certificate of incorporation"; in Maine (Heath Corp. p. 172), a "certificate of organization"; in the recent Illinois statute (Gen. Corp. Act 1919 §4), a "statement of incorporation."

The act under consideration wisely declares the terms "articles of incorporation" and "articles of association" to be *synonymous,* and employs them interchangeably.

PART I, CHAPTER 1, SECTION 10 (Continued)

§53. Words and Phrases.

Definitions—Directors.

The term "directors" shall be deemed to be synonymous with the term "trustees" as applied to the governing body of a corporation.[32] The terms "company," "association" and "society," shall be deemed to be synonymous to the term "corporation."[33] The term "officer" of a corporation shall be construed to mean an executive officer, and shall not include the directors or trustees excepting as individual directors or trustees shall also be executive officers of such corporation.[34] The term "capital stock" shall be construed as meaning capital stock as provided for in the articles or amendments thereto,[35] and shall not include surplus funds or undivided profits.

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART I, Continued

§54. Directors and Trustees.

32. Commonly in our statutes, the word "director" has been applied to members of the executive board of business

corporations, while the word "trustee" has been used, or permitted, to designate the same office in non-profit, social, educational or religious corporations. (See Act No. 232 of 1903 and Act No. 171 of 1903.) The distinction is nominal and of no importance. In general, the duties and responsibilities of members of executive boards are of the same character. All are fiduciaries under an implied trust which requires good faith, fairness and some degree of diligence. Garber v. Town, 208 Mich. 1, 9 (1919); Walsh v. Goulden, 130 Mich. 531, 539 (1902); Bollstrom v. Duplex Power Car Co., 208 Mich. 15, 29 (1919); Torrey v. Toledo Portland Cement Co., 158 Mich. 348, 355 (1909); Pike's Peak Co. v. Pfuntner, 158 Mich. 412, 415 (1909); Cicotte v. St. Anne's Church, 60 Mich. 552, 557 (1886); Henry v. Michigan Sanitarium, 147 Mich. 142, 145 (1907). Good faith requires disclosure to the company of all material facts coming to the attention of an officer or agent within the scope of the corporate business. Michigan Crown Fender Co. v. Welsh, 211 Mich. 148, 160 (1920).

§55. Company, Association and Society.

33. It has long been a presumption of law in this State, that an organization using the word "company" as a part of its name is incorporated. Prussian Insurance Co. v. Eisenhardt, 153 Mich. 198, 202 (1908). In other words, the fact that a company does business under a corporate name raises the presumption of incorporation. Imperial Curtain Co. v. Jacob, 163 Mich. 72, 75 (1910); 3 C. L. 1915 (12535). There would seem to be no reason, under this statute, for doubting that the same presumption applies to an organization using a stated name embracing the word "society" or "association."

§56. Officers Distinguished from Directors.

34. The distinction between officers and directors is in

the interest of clearness. Ordinarily the term "directors" is held to be embraced within the word "officers." (3 Fletcher Cyc. Corp. §1745, p. 2950; United States v. Means, 42 Fed. 599, 603 (1889). Under the present act, a duty imposed upon officers would not extend to mere directors, unless the directors are expressly included.

§57. Officers.

It is axiomatic that there can be no officer without an office. One who holds a position under a title not designated by charter, by-law or appropriate official action, as an office, is at most a mere employee. 3 Fletcher Cyc. Corp. §1744, p. 2950; 21 Am. and Eng. Encyc. Law (2 ed.) p. 836. A general manager is not necessarily an officer. Vardman v. Penn Mutual Life Ins. Co., 125 Ga. 117, 5 A. & E. Ann. Cas. 221, 222 (1906).

The power of an officer is such as is delegated to him by the charter, the by-laws, the action of the governing body, or by holding him out in such a manner that, as to third persons, authority is implied. 3 Fletcher Cyc. Corp. §1731, p. 2924.

§58. Directors.

In the absence of delegated power a director, acting alone, has no greater authority than any other member or stockholder to bind the corporation by his acts. "The directors, when convened as a board, can act, but not otherwise." Kamm & Schellinger Brewing Company v. St. Joseph County Village Fire Ins. Co., 168 Mich. 606 (1912); Hartford Iron Mining Co. v. Cambria Mining Co., 80 Mich. 491, 495 (1890); Lockwood v. Thunder Bay River Boom Co., 42 Mich. 536, 539 (1880).

§59. Capital Stock.

35. The definitive provision of the act as to capital stock

is declarative of the settled law. As stated by Mr. Justice Ostrander: "The term capital stock, in the primary sense, means the fund, property or other means contributed, or agreed to be contributed, by shareholders as the financial basis for the prosecution of the business of the corporation, being made directly through stock subscriptions or indirectly through the declaration of stock dividends." Dodge v. Ford Motor Co., 204 Mich. 459, 493 (1919). Mr. Cook defines capital stock to be: "The sum fixed by the corporate charter as the amount paid in, or to be paid in, by the stockholders, for the prosecution of the business of the corporation and for the benefit of the corporate creditors." 1 Cook Corp. 7 ed. §8, p. 38.

PART I, CHAPTER 1, SECTION 10 (Continued)

§60. Further Rules of Construction.

Definitions—Main Office.

The terms "main business office," "principal business office," and "principal place of business," shall be deemed to mean the place designated in the articles as the main business office in Michigan.[36] The titles to parts, chapters, and subdivisions throughout this act shall not be construed as limiting the provisions thereunder to the subject-matter stated in such headings.[37] Should any part, chapter, subdivision, or section in this act be held to be invalid for any reason, such invalidity shall not be held to impair or invalidate the remainder of such part, chapter, subdivision or the act as an entirety, it being the legislative intent that every section, subdivision, chapter or part hereof shall stand, notwithstanding the invalidity of any particular provision or provisions.[38]

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART I, Continued

§61. Main Michigan Office.

36. The clause to which this note refers was an amendment by addition injected into the bill in the Senate. Its purpose was to make the several different expressions, as used in the act, mean one and the same thing.

§62. Titles Not Limitations.

37. A statute is passed as a whole, and its subdivision into parts does not affect its unity. Its intent is to be gathered, like the intent of a will, "from its four corners." 25 R. C. L. §248, p. 1009.

§63. Unconstitutionality.

38. See §§2 and 3.

"An unconstitutional law is no law, and in no case can it be made a justification in law for any action or non-action." Adsit v. Secretary of State, 84 Mich. 420, 429 (1891): "It is a familiar principle that a law is not to be held void because it attempts too much * * * * Where such a law creates a system, and the part which is legal cannot stand by itself without the aid of the rest, or is so much affected or disturbed by the rejection of the rest that it could not be supposed the legislature would have adopted it by itself, the whole shall be rejected, because the part cannot be regarded as an expression of the legislative will." Mr. Justice Cooley, in Attorney General v. The Common Council of the City of Detroit, 29 Mich. 108, 114 (1874); Brooks v. Hydorn, 76 Mich. 273 (1889); Brown v. Judge of Superior Court of Grand Rapids, 145 Mich. 413 (1906); Chambe v. Judge of Probate, 100 Mich. 112 (1894). On

the other hand, *"An unconstitutional provision or section in a statute will not affect the other provisions of the law unless they are essentially and inseparably connected in substance.* Where, therefore, a part of a statute is unconstitutional, that fact does not authorize the courts to declare the remainder void also, unless all the provisions are connected in the subject matter, depending on each other, operating together for the same purpose, or otherwise so connected together in meaning that it cannot be presumed the legislature would have passed the one without the other." Mathias v. Cramer, 73 Mich. 5, 8 (1888); Loomis v. Rogers, 197 Mich. 265, 282 (1917); Klatt v. Wayne Probate Judge, 159 Mich. 203, 206 (1909); 26 Am. & Eng. Enc. Law, p. 570.

CHAPTER 2

MODE OF INCORPORATING AND REQUISITES TO INCORPORATION

(References are to annotator's sections.)

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PART I, CHAPTER 2, SECTION 1

§64. Contents of Articles—Name and Class.

Articles.

With the exception of Ecclesiastical Corporations provided for in chapter three, part three, hereof, the articles of incorporation shall in all cases be made on suitable and uniform blanks [1] signed by the persons associating in the first instance [2] and acknowledged before a notary public,[3] and shall state:

Name.

First, The name assumed and by which the corporation shall be known in law;[4]

Class.

Second ,the section or sections under chapter one, part 1, hereof, under which the orporation is classified;

For corresponding section of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I

§65. Uniform Blanks.

1. Typewritten articles conforming to the forms prepared by the secretary of state will be accepted, as heretofore. *Uniformity is all that is required.* The statute tacitly recognizes (in §127 of this chapter) that it would be impracticable, if not impossible, for the secretary of state to prepare forms adapted to every kind of organization authorized. Hereafter, the forms supplied by the secretary of state are to be *sold* to users—not furnished free as under Act No. 232 of 1903. Annual report blanks are supplied without charge.

§66. Signed by Persons Associating.

2. The articles may be signed by an attorney-in-fact in the name of his principal. (1 Machen Corp. §131, p. 121.) When this course is pursued, the written power of attorney should be attached to and filed with the articles.

§67. Acknowledgment.

3. Until the articles have been acknowledged, there is no corporation formed thereunder, either *de jure* or *de facto.* Doyle v. Mizner, 42 Mich. 332, 338 (1879); Carmody v. Powers, 60 Mich. 26, 30 (1886). Acknowledgment of the articles is to be made *"before a notary public."* There is authority for saying that, where the statute requires acknowledgment before a particular officer, acknowledgment before any other officer is insufficient. (1 Fletcher Cyc. Corp. §210, p. 415.) The present statute is to be read in conjunction with other statutes of this State. Where the acknowledgment is to be taken outside this State, and

in some other state, territory or district of the United States, the procedure laid down in 3 C. L. 1915, §11757, may be followed. Where the acknowledgment is to be taken in a foreign country, §11760 applies.

§68. Name.

4. It will be observed that §111 of this chapter forbids the use of the name of another corporation existing or lawfully doing business in this State, or a name "so nearly similar thereto as to lead to confusion or deception."

The determination of conflict or non-conflict by the secretary of state is not final; nevertheless such determination is his proper function in the first instance and is not without weight with the courts. Young & Chaffee Furniture Co. v. Chaffee Brothers Furniture Co., 204 Mich. 293, 297 (1918).

The statute seeks to prevent injury to other corporations and imposition upon the public; but the question of good faith or bad faith is not controlling if there is actual conflict of names. Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159, 164; Myers v. Kalamazoo Buggy Co., 54 Mich. 215, 222 (1884).

A corporate name is in the nature of a common law trade-mark. The use of a corporate name conflicting with a name in prior use will be restrained by the courts, if the similarity and manner of use is such that the public has been or is likely to be misled. Lamb Knit-Goods Company v. Lamb Glove & Mitten Company, 120 Mich. 159, 44 L. R. A. 841 (1899); Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias, 113 Mich. 113, 38 L. R. A. 658 (1897); Penberthy Injector Company v. Lee, 120 Mich. 174 (1899); Williams v. Farrand, 88 Mich. 473 (1891); Michigan Savings Bank v. Dime Savings Bank, 162 Mich. 297 (1910).

It has been held that mere conjecture that confusion may result is not ground for equitable relief. Michigan Savings Bank v. Dime Savings Bank, 162 Mich. 297, 300 (1910). But "equity will not permit a rival manufacturer to trail his different products upon the reputation of another." Kellogg v. Kellogg Toasted Corn Flake Co., 212 Mich. 95 (1920); Gordon Grate Co. v. Gordon, 142 Mich. 488 (1905).

§69. Names Held to Be Conflicting.

The names of the following corporations have been held to be conflicting:

First State Bank of Zeeland with The Zeeland State Bank;

Report Att'y Gen. (Bird) 1905, p. 82.

W. F. Doubleday Company with Doubleday Bros. Company;

Report Att'y Gen. (Bird) 1910, p. 240.

Ford Motor Company of Michigan with Ford Motor Company;

Report Att'y Gen. (Kuhn) 1911, p. 165.

Finney's Famous Orchestra with Finney's Orchestra;

Finney's Orchestra v. Finney's Famous Orchestra, 161 Mich. 289 (1910).

People's Outlet Company with People's Outfitting Company;

People's Outfitting Co. v. People's Outlet Co., 170 Mich. 398 (1912).

Lamb Glove & Mitten Company with Lamb Knit-Goods Company; and

Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159 (1899).

Kalamazoo Buggy Company with Kalamazoo Wagon Company;

Myers v. Kalamazoo Buggy Co., 54 Mich. 215 (1884).

For an extensive collection of names held to be conflicting, see 2 Fletcher Cyc. Corp. §725, pp. 1645 to 1653.

§70. Names Held Not to Be Conflicting.

In the absence of a showing that the public has been actually misled by the similarity, the following names have been held to be non-conflicting:

Dime Savings Bank with Michigan Savings Bank;

Michigan Savings Bank v. Dime Savings Bank, 162 Mich. 297 (1910).

Bank of Detroit with Detroit Savings Bank;

Detroit Savings Bank v. Highland Park State Bank, 201 Mich. 601 (1918).

Chaffee Brothers Furniture Company with Young & Chaffee Furniture Company; and

Young & Chaffee Furniture Co. v. Chaffee Brothers Furniture Co., 204 Mich. 293 (1918).

Improved Order Knights of Pythias with Supreme Lodge Knights of Pythias;

Supreme Lodge Knights of Pythias v. Improved Order Knights of Pythias, 113 Mich. 133 (1897).

See also Great Hive L. O. T. M. v. Supreme Hive, 135 Mich. 392 (1904); Penberthy Injector Co. v. Lee, 120 Mich. 174 (1899); Howard v. Lovett, 198 Mich. 710 (1917).

While the statute applies the restriction to names in prior use by corporations, the common law principle reaches further: a corporation cannot lawfully appropriate to itself a name in which a pre-existing unincorporated association has a property right. 7 R. C. L. §97, p. 127.

Circumstances may exist, and frequently do exist, under which a man may not use his own name as a part of a corporate name, or in connection with goods produced by a corporation in which he is interested. Penberthy Injector Co. v. Lee, 120 Mich. 174 (1899); Kellogg v. Kellogg Toasted Corn Flake Co., 212 Mich. 95 (1920); Lamb Knit-Goods Co. v. Lamb Glove & Mitten Co., 120 Mich. 159 (1899). For discussion of same general principles, see Beal v. Chase, 31 Mich. 490 (1875); Williams v. Ferrand, 88 Mich. 473 (1891); Weickgenant v. Eccles, 173 Mich. 695 (1913); Howard v. Lovett, 198 Mich. 710 (1917).

§71. Transfer of Name from Old Corporation to New.

It sometimes happens that it is desirable to organize a new corporation having, from the outset, the name of an existing corporation. This may be done, through cooperation of the stockholders of the old company, by changing the old company's name (by amendment), whereupon the discarded name may be adopted by the new company.

PART I, CHAPTER 2, SECTION 1 (Continued)

§72. Contents of Articles—Purpose and Place.

Purposes. Third, the purpose or purposes for which the corporation is formed;[5]

Place. Fourth, the principal place or places at which its operations are to be conducted, and the post-office address of its main business office in Michigan; and also the place where its main business office without the State of Michigan (if any) is located;[6]

For corresponding section of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I

§73. Purpose or Purposes.

5. The statement of purposes embodied in the articles is the sole criterion accepted by the courts in determining the purposes for which the corporation has been formed. Attorney General v. Lorman, 59 Mich. 157, 162 (1886); Detroit Driving Club v. Fitzgerald, 109 Mich. 670, 675 (1896); Van Etten v. Eaton, 19 Mich. 186, 194 (1869).

The authorized purposes of a corporation consist of those announced in its articles, together with such incidental activities as are necessary or useful in the lawful attainment of the purposes expressed. Duluth, South Shore & Atlantic Railway Co. v. Wilson, 200 Mich. 313, 322 (1918); Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 373 (1910).

§74. Multiple Purposes.

As construed by the Department of State, and as intended by the framers of the act, multiple purposes are admissible. (See §§7, 8.)

The term "any lawful business" is as broad when applied to a corporation as when applied to a partnership, or to an individual. It comprehends the various objects, announced in the articles, in which the corporation desires to invest its energies and its capital. All in which it busies itself constitutes its business.

In England, where persons may become incorporated for any lawful purpose, "neither the English lawyers nor their courts have ever denied that a corporation might lawfully be organized . . . . for two or more disconnected purposes." 1 Machen Corp. §50, p. 47. The same rule has been applied in this country. In re Humphrey Advertising Co., 177 Fed. 187 (1910); 1 Fletcher Cyc. Corp. §117, p. 200.

§75. Statement of Purpose or Purposes.

If the corporation is to be formed for a single purpose, a brief statement of that purpose in general terms will be sufficient. The purpose stated will carry with it all of its incidents. All parts are comprehended in the whole. Dodge v. Ford Motor Co., 204 Mich. 459, 498 (1919); Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 373 (1910); 2 Fletcher Cyc. Corp. §795, p. 1770. The powers of a corporation within the field of its declared purpose are as broad as those of an individual, or of a partnership, except as expressly limited by statute. Herrick v. Humphrey Hardware Co., 73 Neb. 809, 11 Ann. Cas. 201, 203 (1905).

The right to adopt multiple corporate purposes does not necessarily require verbose statement in the articles touching the purposes adopted. A clear and definite statement of each purpose claimed is all that is contemplated by the statute.

Purposes are a matter of selection; powers are a matter of law. Purposes, but not powers, are required to be stated. See Heath Corp. §18, p. 28.

§76. Principal Place of Operation.

6. The place of operation is the place at which the corporation's productive work is accomplished. The corporation may have as many places of operation as its articles specify, either within, or outside, this State. (§7.) The business office and the place of operation may be at one and the same place, or may be as widely separated as is desired.

§77. Main Business Office.

For purposes of taxation, the residence of a corporation

is at the place where its bona fide principal business office is located. 1 C. L. 1915 (4005). While a corporation is estopped to deny that its residence is as stated in its articles of association, or in certificates amendatory thereof, nevertheless the assessing officers may disregard this statement of residence and assess taxes where the corporation's principal office is actually located. Detroit Transportation Co. v. Assessors, 91 Mich. 382 (1892); Milwaukee Steamship Co. v. Milwaukee, 83 Wis. 590, 18 L. R. A. 353 (1892); Teagan Transportation Co. v. Detroit, 139 Mich. 1 (1905); Detroit v. Lathrop Estate, 136 Mich. 265 (1904).

Technically, a corporation always remains a resident of the state by which it has been created. Even though its principal office and its entire business may be outside the state of its origin, that state remains its legal domicile. 3 Cook Corp. (7 ed.) §757, p. 2772; Thompson v. Waters, 25 Mich. 214, 220 (1872); Marshall v. R. M. Owen Co., 171 Mich. 232, 238 (1912).

Ordinarily the place of business to be designated means the township, village or city in which the business office is located. 1 Fletcher Cyc. Corp. §196, p. 309. But under the present act the *post office address* of the main business office is required.

PART I, CHAPTER 2, SECTION 1 (Continued)

§78. Contents of Articles—Capital and Shares.

Fifth, (A) If a corporation for pecuniary profit— Profit Corporation.

(a) The amount of total authorized capital stock; the amount of capital stock subscribed,[7] and the classes of stock authorized, with the number, nominal or par value and conditions of each class of such shares;[8] (and the number of shares, if any, of stock of non-par value

Payment—Continued.

and other statements respecting such issue as required by chapter two, part two, hereof;)

For corresponding section of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I

§79. Capital Stock.

7. The familiar provision of Act 232 of 1903 requiring 50% of the authorized capital to be subscribed, and 10% of the authorized capital to be paid in, at the time of organization has been abrogated. A new plan is substituted.

Under the present act, a stock corporation having, for example, $10,000,000 authorized capital stock, may file its articles and begin business with $1,000 subscribed and paid in. The check upon abuse of the privilege of large capitalization and small payment is provided by the franchise fee, the capital stock tax (see §677), the Michigan Securities Commission and the Michigan Public Utilities Commission.

The capital stock and subscription requirements of the act may be stated as follows:

(a) Any amount of capital stock, not less than $1,000, may be authorized (§277).

(b) The articles determine, and must state, how much is to be subscribed and paid in before the corporation actually begins business. No specific amount is required above the minimum of $1,000 (§277).

(c) Where the articles show subscriptions exceeding $10,000, ten per cent thereof must be paid in at the time of executing the articles (§277).

(d) Where the articles do not show subscriptions exceeding $10,000, at least $1,000 must be subscribed and paid in at the time of executing the articles, *except* that in

case of corporations having a capitalization of $2,000, or less, not less than twenty-five per cent must be subscribed and paid in at the time of execution.

§80. Preorganization Subscriptions.

Preorganization subscriptions may arise by execution of a subscription agreement, or by merely signing the articles wherein the amount subscribed by each incorporator is expressed. Valentine v. Berrien Springs Water Power Co., 128 Mich. 280, 294 (1901); Campbell v. Raven, 176 Mich. 208, 214 (1913); St. Johns Mfg. Co. v. Munger, 106 Mich. 90, 95 (1895); Carson v. Arctic Mining Co., 5 Mich. 288, 292 (1858); Dexter & Mason Plank R. Co. v. Millerd, 3 Mich. 91, 99 (1854).

For form of separate pre-organization subscription, see §697.

§81. Par Value.

8. The face, or par value of stock issued under this act, whether common or preferred, must be $10, or some multiple thereof, or $25, or some multiple thereof, but in no event more than $100 (§264). It is recommended that the convenient denomination of $10, or the standard denomination of $100 be used.

PART I, CHAPTER 2, SECTION 1 (Continued)

§82. Contents of Articles—Payment of Capital.

[Fifth. (A), continued]

Payment of Capital.

(b) The amount of actual capital, in cash or property or both, which such corporation owned and possessed at the time of executing the articles,[9] and a sworn statement as to such property's cash value, and the amount of stock issued or to be issued in payment for the same;[10]

For corresponding section of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I, Continued

§83. Property Owned and Possessed.

9. When incorporators have proceeded in good faith, under a valid statute, for an authorized purpose, and have executed and acknowledged articles of association pursuant to that purpose, a corporation *de facto* instantly comes into being. Eaton v. Walker, 76 Mich. 579 (1889); Newcomb-Endicott Co. v. Fee, 167 Mich. 574, 580 (1911). A *de facto* corporation is an actual corporation. As to all the world, except the State, it enjoys the status and powers of a *de jure* corporation. 1 Thomp. Corp. §225, p. 240. It may, and the present act contemplates that it shall, receive transfers and conveyances of property (§101). In other words, where stock is to be paid up in property at the time of organization, such property must be transferred or conveyed, and possession thereof must be given, to the company at the time of executing the articles (See §82).

§84. Sworn Statement of Value.

10. The provision as to a sworn statement is a survival of a similar provision engrafted upon Act 232 of 1903 by the Amendatory Act 146 of 1907 (2 C. L. 1915, §9018, sub. sixth). Wilfully swearing falsely to material allegations contained in such an affidavit would undoubtedly constitute perjury. 3 C. L. 1915, §14973. And procurement of such false swearing would constitute subornation of perjury. Id. §14974. See also 21 R. C. L. §10, p. 262.

It is to be noted that this affidavit may be relied upon by the United States Government in determining taxable profits upon the property sold.

PART I, CHAPTER 2, SECTION 1, FIFTH (Continued)

§85. Contents of Articles—Assets Non-Profit Companies.

[Fifth Continued]

(B) If any other than a corporation for pecuniary profit— Other than Profit.

(a) The amount of assets classified as to real and personal property which such corporation possesses; Assets.

(b) The terms of any general scheme of financing such corporation;[11] Finances.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I, Continued

§86. Assets Possessed by Non-Profit Organizations.

11. When it is remembered that non-profit corporations have full contractual powers and may, and frequently do, engage in transactions requiring the use of capital and credit, the propriety of requiring, at the outset, a statement of their resources for the protection of those with whom they deal is apparent. The reason is the same as that upon which like statements and reports are demanded from corporations formed for pecuniary profit.

"No doubt one important reason—perhaps the principal reason—for the statutory provision is to enable persons who may have occasion to deal with the corporation to ascertain their condition, and their title to credit." Bank of Saginaw v. Pierson, 112 Mich. 410, 414 (1897); Dime Savings Bank v. Fletcher, 158 Mich. 162, 168 (1909);

Emerson v. Detroit Steel & Spring Co., 100 Mich. 127, 133 (1894); Selberman v. Munroe, 104 Mich. 352, 355 (1895); Hinchman v. Weeks, 85 Mich. 535, 545, 546 (1891); Mooney v. Davis, 75 Mich. 188, 192 (1889); Genesee County Savings Bank v. Michigan Barge Co., 52 Mich. 164, 169 (1883). This provision is new as applied to non-profit companies. No similar requirement appeared in Act 171 of 1903, 2 C. L. 1915, §9054, et seq.

§87. General Scheme of Financing Non-Profit Corporation.

The policy announced in the preceding note is carried one step further by requiring disclosure of proposed sources of revenue. Dues, donations, rents, income on funds, and the like, provided or contemplated by the organization as a source of income are to be recited.

PART I, CHAPTER 2, SECTION 1 (Continued)

§88. Contents of Articles—Term—Stockholders—Subscriptions.

Term of Years. Sixth, The term of years the corporation is to exist;[12]

Stockholders. Seventh, (a) The names of the stockholders, in stock corporations, their respective residences, and the number of shares subscribed for by each;[13]

Incorporators. (b) The names of the incorporating members, in non-stock corporations, and their respective residences;

For corresponding section of Act 232 of 1903, see Appendix B (9018).

A New Statute

§87. General Scheme of Financing Non-Profit Corporations.

SECTION 1. *From and after the passage of this act, all organizations, institutions or associations formed for charitable purposes, who, through agents or representatives, publicly solicit and receive public donations or sell memberships in this state, shall be required to file with the state board of corrections and charities a statement setting forth the name and location of such organization, institution, or association, the purposes for which such organization, institution, or association exists, the name of its principal officers, and soliciting agents, the purposes for which money solicited is to be expended, and the terms under which solicitors are employed. It shall be unlawful for any charitable organization, institution or association to hire, engage, or employ any solicitors who shall receive as their compensation a percentage of the funds solicited by them, and it shall be unlawful for any solicitor to accept employment from any charitable organization, institution or association and receive a percentage of the funds collected. If in the judgment of the state board of corrections and charities, such statements shall be deemed sufficient evidence that the moneys thus collected are to be used in the interest of the purposes represented, the state board of corrections and charities shall be authorized to issue to said organization, institution or association, its agents and representatives, a state license without expense, authorizing said organization, institution or association to publicly solicit and receive public donations or sell memberships in any county, city or township in the state. Such license shall be valid for one year from and after the date of its issuance, and may be renewed from time to time in the same manner as is herein provided for the original granting thereof. Any license issued to an organization, institution or association, under the provisions of this act, may be revoked by the state board of corrections and charities for cause shown, and after reasonable notice to said organization, institution or association and after due opportunity to be heard. Nothing in this act, however, shall be construed to prohibit any local organization; institution or association, from publicly soliciting funds or donations within the county in which such institution, organization or association is located: Provided, however, That no license issued under the terms of this act shall be deemed to authorize the soliciting of funds thereunder in any township, village or city in this state, without having first obtained a separate township, village or city license, to do so from the proper officials of said township, village or city.*

Approved April 23, 1925.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 72, effective August 27, '25.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I, Continued

§89. Term of Existence.

12. Corporations having a capital stock, whether organized for profit or not for profit, are limited to the constitutional term of thirty years (§152) subject to amendment and repeal rights reserved to the State, and with renewal privileges granted the corporation for an unlimited number of thirty-year extensions (§154). This provision is rested upon section 3, article XII, of the state constitution of 1908, which provides that: "No corporation shall be created for a longer period than thirty years, except for municipal, railroad, insurance, canal or cemetery purposes, or corporations organized without any capital stock for religious, benevolent, social or fraternal purposes; but the legislature may provide by general laws, applicable to any corporation, for one *or more* extensions of the term of such corporations, while such term is running, not exceeding thirty years for each extension, on the consent of not less than two-thirds of the capital stock of the corporation; and by like general laws for the corporate reorganization for a further period, not exceeding thirty years, of such corporations *whose terms have expired* by limitation, on the consent of not less than *four-fifths* of the capital stock."

§90. Non-Stock Corporations.

Non-stock corporations for religious, benevolent, social or fraternal purposes, now existing, or hereafter incorporated under this act, "shall be deemed to be *in perpetuity* (irrespective of any provisions of prior law or in its articles) without reorganization or renewal, unless it shall *hereafter* fix a shorter term in its articles" (§161).

All other corporations organized under this act are sub-

ject to the thirty year limitation, with extension privileges, the same as stock corporations (§121).

§91. Reason for Constitutional Limitation.

As stated by Mr. Justice Grant: "The evident intent . . . . was to prevent the perpetuation of corporate power and corporate wealth so as to place it practically beyond the reach of the people or the legislature. It was intended to apply to corporations of a private character, organized for profit and the accumulation of wealth, and not to those which were public in their character, and designed solely for the purposes of education and improvement. Kent County Agricultural Society v. Houseman, 81 Mich. 609, 614 (1890).

§92. Shares of Stock.

13. Where more than one class of stock is provided, the number of shares of each class taken by each stockholder should be clearly expressed. The articles of association stand as a subscription contract between the corporation and the subscriber. *By the act of subscribing, the subscriber instantly becomes a stockholder.* Dexter & Mason Plank Road Co. v. Millerd, 3 Mich. 91, 99 (1854); Carson v. Arctic Mining Co., 5 Mich. 288, 292 (1858); St. Johns Manufacturing Co. v. Munger, 106 Mich. 90, 95 (1895); Campbell v. Raven, 176 Mich. 208, 214 (1913); Valentine v. Berrien Springs Water Power Co., 128 Mich. 280, 294 (1901).

PART I, CHAPTER 2, SECTION 1 (Continued)

§93. Contents of Articles—Officers—Directors—Attorney.

Officers.

Eighth, The names and addresses of the officers and directors chosen by the incorporators

to act for the corporation for the first year; or, in case no such officers have been elected, then the name and address of the representative or attorney-in-fact authorized to act for such incorporators, as provided for in section 7 of this chapter;[14]

Officers—Continued.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART I, Continued

§94. Officers and Directors or Attorney-in-fact.

14. Not infrequently the incorporators do not include all, or even any, of the persons who are to become the actual managing and executive force of the corporation. The provision authorizing appointment of an attorney-in-fact (§123) by, and to represent, the incorporators is designed as a substitute for the practice of electing officers and directors who are mere "dummies."

The incorporators *may* elect provisional officers, who will by that fact become *de jure* officers when incorporation has been fully accomplished. But it is not necessary to elect such officers at the time of signing the articles. The election may be postponed until incorporation has become complete. In the event of such postponement, it is obligatory that such fact be stated in the articles, and that there shall be named in the articles an attorney-in-fact to represent the incorporators in filing the articles and in calling the first subsequent organization meeting (§123).

PART I, CHAPTER 2, SECTION 1 (Continued)

§95. Contents of Articles—Special Statements—Organizers.

Ninth, Any special statement or statements permitted or required by this act in relation to

Special Statements.

Special Statements —Continued.

the primary organization of any particular class of corporation, not included in the foregoing requirements,[15] *provided*, That in any case where there are more than three incorporators, either upon the formation, merger, consolidation or renewal of a corporation, or more than three stockholders or subscribers, the subscribers or stockholders or incorporators, as the case may be, may, by suitable resolution adopted at the organization meeting, designate any three among themselves to sign and acknowledge the articles for themselves and for the remainder of such incorporators, subscribers or stockholders, in which case a copy of the resolution, duly certified by the person acting as secretary of such meeting shall accompany the articles.[16]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, Part I, Continued

§96. Statements Permitted or Required.

15. The articles may contain:

I. "Any lawful provision which the incorporators may deem advantageous for the regulation of the business of the corporation" (§116). For example, a limit may be placed upon the aggregate indebtedness to be contracted by the corporation. 2 Fletcher Cyc. Corp. §917, p. 1863.

§97. Statements Permitted or Required—Continued.

II. "Any provision creating, defining, limiting and regulating the powers of the corporation and of the directors" (§116). This provision was derived from Act 232 of 1903, 2 C. L. 1915, §9018, p. 3273, which was copied from the General Corporation Act of 1896 of New Jersey (Dill

Corp. p. 17). Of course the powers "created" must be consistent with and subordinate to the act. Audenrild v. East Coast Milling Co., 68 N. J. Eq. 450 (1904), 59 Atl. 577. Matters referred by the act to the stockholders or members, cannot be delegated to the directors. 1 Machen Corp. §121, p. 112. Thus a provision authorizing the directors to sell the entire corporate property would be nugatory (§129). But a provision authorizing the purchase of shares in other corporations organized for similar purposes would be valid (though unnecessary) because such power is expressly conferred by the act (§147).

(a) The articles may provide that the officers of the corporation, or any of them, shall be elected by the stockholders or members (§219). It is generally true, however, that a board will function more effectively when permitted to select its own officers.

(b) The articles may provide that the directors shall not enact by-laws. Otherwise they possess that power under this act (§219).

(c) The articles may provide for the issue of industrial stock, although the power exists without such provision (§321).

(d) The articles may provide that there shall be no transfer of stock upon the books of the company for a reasonable period (for example, 10 days) prior to any annual meeting. Marshall Corp. p. 800.

(e) The articles of *cooperative associations* may provide "the necessary qualifications of stockholders or members, and may regulate transfers of stock and memberships" (§366).

(f) The articles of *non-profit corporations* may contain limitations upon the powers of the directors or trustees (§407).

(g) The articles of *local lodges* or societies may contain special provisions as to purposes and government (§444)

and may provide for the election or appointment of officers, committees, trustees and agents (§447).

§98. Statements Permitted or Required—Continued.

III. Any provision creating, defining, limiting and regulating "the rights and privileges of stockholders, or any class or classes of stockholders, including provisions for the better security of preferred stockholders, for the creating of a sinking fund for retirement of preferred stock, and prescribing and limiting the rights of any class or classes of stockholders to subscribe for increases of stock" (§116).

(a) The articles may provide the terms upon which preferred stock may be issued (§264).

(b) The articles may provide the terms upon which industrial stock may be issued (§321).

(c) The articles may provide that no class of stock, other than common stock, shall have the right (as distinguished from the privilege) to subscribe for any portion of an increase of stock. In the absence of such a provision, it has been held that all stock, regardless of class, enjoys a right to subscribe to an increase of stock pro rata prior holdings. 4 Thomp. Corp. §3647, p. 226. And this subscription right is a transferable property right, and it is a right to subscribe for the new stock *at par*. Hammond v. Edison Illuminating Co., 131 Mich. 79, 85 (1902). See also Essex v. Essex, 141 Mich. 200, 203 (1905). Under the present act the stockholders have the power *to fix the price*, not less than par, at which stockholders may subscribe for increase stock (§310).

§99. Statements Permitted or Required—Concluded.

IV. Where part-paid stock is issued for property, the articles *must* state the number of shares so issued and the amounts credited thereon as partial payments (§147).

For special matters *required* to be embodied in the articles, see

As to lodges of state jurisdiction (§427);
As to trustee corporations (§459);
As to membership of foundations (§486); and
As to educational corporations (§491).

§100. Execution of Articles by a Committee.

16. While this provision is general, it is intended to facilitate the incorporation of large bodies. It will be found useful in the incorporation of voluntary associations having a numerous membership. In this relation it may be observed that the principle that no one may be required to become a member of a corporation against his will remains unchanged. "It requires the assent of every member to bring him in and not his dissent to keep himself out." Mason v. Finch, 28 Mich. 282, 285 (1873); Schiller Commandery v. Jaennichen, 116 Mich. 129 (1898); Finney's Orchestra v. Finney's Famous Orchestra, 161 Mich. 289 (1910); Detroit Society for the Study and Prevention of Tuberculosis v. Detroit Society, 167 Mich. 102 (1911).

Part I, Chapter 2, Section 2

§101. Articles—Filing and Preliminary Contracts.

Filing Articles.

Such articles in triplicate, shall be sent to the office of the Secretary of State where the original, after approval, shall be filed.[17] The two remaining sets shall be returned to the incorporators or their representative, certified by the Secretary of State as being true copies of the original on file. No such articles shall be approved for filing by the Secretary of State unless and until they comply with this act.[18] The filing, franchise and certificate fees required by law

Filing Articles—Continued.

shall in all cases accompany the articles.[19] One of the certified copies so returned to the incorporators shall be filed in the office of the county clerk of the county in which such corporation maintains its principal business office.[20] Upon such filing in the office of the Secretary of State the company or association shall be deemed a body corporate within the meaning of the laws of this State, and the Secretary of State shall thereupon issue his written authority to such corporation to commence its business.[21] *Provided, however,* That no contract made by the incorporators preliminary to the filing of such articles shall be deemed to be invalid or ineffectual because made prior to such filing, and all property held by such incorporators for the benefit of the proposed corporation shall be deemed to be the property of such corporation for the purpose of complying with section one of this chapter.[22] The Secretary of State and the several county clerks receiving such articles for filing, shall each certify upon every such articles and upon all amendments filed by them, the time when they were received and filed.

Authority to Commence Business.

Preliminary Contracts.

For corresponding provision of Act 232 of 1903, see Appendix B (9025 and 9035).

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 2, PART I

§102. Articles in Triplicate.

17. This is construed to mean *executed* in triplicate. The burden of completing the two copies for certification is shifted to the incorporators. (See §101.) One certified copy is to be filed with the county clerk of the county

where the corporation's business office is located. The other copy may be retained by the corporation for use as evidence.

For forms of articles, see §§689, 690.

§103. Rejection of Incorrect Articles.

18. The statute imposes upon the secretary of state the duty to reject articles which fail to comply with the act. A function which has been heretofore exercised without direct, express authority (Isle Royale Land Corporation v. Osmun, 76 Mich. 162, 172 [1889]) is now properly and definitely authorized.

§104. General Corporation Fees of Secretary of State.

19. Act 85 of 1921 fixes a new fee schedule as follows:

Filing, examining and certifying articles of domestic corporations $5.00

Filing and examining papers involved in application of a foreign corporation for admission to do business in Michigan $10.00

Filing and examination of any annual or special report $2.00

Filing, examining and certifying amendments to articles (domestic or foreign) $5.00

Filing and examining notice of dissolution or of change of attitude $5.00

Preservation of records on request of any corporation voluntarily dissolved $10.00

Certifying any part of files or records pertaining to any corporation and for which no other provision is made, 50 cents per folio and $1 for each certificate.

Certifying and forwarding record of determination of franchise fee to appeal board $10.00

§105. Organization, Admittance and Privilege Fees.

Non-profit corporations: (§676.)

(a) Organization fee *domestic* non-profit company $10.00

(b) Admittance fee *foreign* non-profit company $10.00

(c) Periodic privilege fee of both foreign and domestic non-profit companies.....$10.00

The organization or admittance fee covers the privilege fee for the year of organization or admittance. (§682.)

Profit corporations: (§677.)

(a) Organization fee *domestic* profit corporation 1 mill upon each dollar of authorized capital stock. Minimum fee $25.

(b) Admittance fee *foreign* profit corporation 1 mill upon each dollar of its property owned and used in Michigan. Minimum fee $25.

The organization or admittance fee of profit corporations covers the privilege fee for the year of organization or admittance. (§682.)

§106. Privilege Fees Payable by Profit Corporations.

All corporations for pecuniary profit, organized or doing business under the laws of Michigan, except railroad, interurban railroad, telegraph, telephone and foreign insurance companies, are required to pay to the Secretary of State in the month of July or August, in each year, a privilege fee as follows:

(a) Domestic corporations, three and one half mills upon each dollar of paid-up capital stock and surplus, but not less than $50 nor more than $10,000. (§678.)

(b) Foreign corporations, the same rate, maximum and minimum, as domestic corporations, except that the fee is computed "upon the proportion of the corporation's prop-

erty owned and used in Michigan, in the ratio that such property bears to the entire property of the corporation." (§681.)

§107. Special Classes.

Building and loan associations and mining companies are given special classification for privilege fee purposes:

(a) *Building and Loan Associations* pay one mill upon each dollar of paid-in capital and legal reserve, but in no case more than $2,000.

(b) *Mining Companies* pay three and one-half mills upon each dollar of the fair average value of their issued capital stock (inclusive of surplus and undivided profits) for the preceding year, ending on the thirtieth day of June of the year of the report and payment (§680), but not less than $50 nor more than $10,000.

§108. Fees of County Clerk.

20. There is no general statute fixing the fee to be paid to the county clerk for filing a certified copy of articles of association.

§109. Written Authority to Commence Business.

21. The expression "commence its business" refers to such general business as the corporation is organized to transact. Detroit Transportation Co. v. Board of Assessors, 91 Mich. 382 (1892). There is no penalty imposed upon premature commencement. After de facto organization has been attained, *the State alone* can complain of an unauthorized exercise of corporate powers. 10 Cyc. 256. The question of rightful existence cannot be raised in a collateral proceeding, but only in a direct proceeding brought for that purpose by the State. Marshall Corp. p. 123. See also Detroit City Railway v. Mills, 85 Mich.

634, 648 (1891); Wyandotte Electric Light Co. v. Wyandotte, 124 Mich. 43, 48 (1900); Newcomb-Endicott v. Fee, 167 Mich. 574, 582 (1911); Eaton v. Walker, 76 Mich. 579 (1889); Johns v. People, 25 Mich. 498 (1872); 1 Fletcher Cyc. Corp. §184, p. 377, et seq.

§110. Preorganization Contracts Valid.

22. In the absence of statutory authorization, a corporation has no existence, and therefore has no powers for any purpose, prior to organization. Owen v. Shepard, 59 Fed. 746, 748 (1894). But in the absence of constitutional restrictions, it is competent for the legislature to make corporations liable upon preorganization contracts. Badger Paper Co. v. Rose, 95 Wis. 145, 37 L. R. A. 162 (1897); 1 Fletcher Cyc. Corp. §252, p. 487. The present act accomplishes this object. (§101.)

PART I, CHAPTER 2, SECTION 3

§111. Articles—Conflicting Name.

Name.

No corporation shall assume any name already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar thereto as to lead to confusion or deception:[23] *Provided, however,* That in the case of a foreign corporation applying for admission to this State whose name is similar to another foreign corporation already admitted into this State, but each having respectively the name of a different locality as a part of its corporate name, such names so distinguished shall not be deemed sufficiently similar as to lead to confusion or deception:[24]

For corresponding section of Act 232 of 1903, see Appendix B (9018).

Amendment to the Statute

§111. Articles—Conflicting Name.

SECTION 3. No corporation shall assume any name already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar thereto as to lead to confusion or deception. [23] *Provided, however,* That in the case of a foreign corporation applying for admission to this State whose name is similar to another foreign corporation already admitted into this State, but each having respectively the name of a different locality as a part of its corporate name, such names as distinguished shall not be deemed sufficiently similar as to lead to confusion or deception: [24] And provided further, That no corporation organized under or subject to the provisions of this act shall assume any name which implies that it is a banking corporation, *an insurance or surety company* or a trust company, and no such corporation shall use the words, "bank," "deposit," "insurance," "surety," "security," "trust," or "guaranty" or "building and loan" in its corporate name. [25] * * * [a]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

a. The words omitted are: but this proviso shall not be construed as applying to the name of any corporation adopted prior to August twelfth, 1917.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART I

23. Name. See §§68, 69, 70, 71.

§112. Names of Foreign Corporations Distinguished by Locality.

24. It has been held that the name "International Trust Company," a corporation domestic in the jurisdiction of the decision, was not infringed by use of the name "International Loan & Trust Company of Kansas City, Missouri." 153 Mass. 271, 10 L. R. A. 758 (1891). But see Central Trust Co. v. Central Trust Company of Illinois, 149 Fed. 789 (1906). Also United States Heating Co. of Maine v. United States Light & Heating Company of New York, 181 Fed. 182 (1910); 2 Fletcher Cyc. Corp. §736, p. 1680.

PART I, CHAPTER 2, SECTION 3 (Continued)

§113. Articles—Forbidden Words in Name.

Forbidden Names.

And *Provided further,* That no corporation organized under or subject to the provisions of this act shall assume any name which implies that it is a banking corporation, an insurance or surety company or a trust company, and no such corporation shall use the words "bank," "deposit," "insurance," "surety," "security," "trust," or "guaranty," or "building and loan" in its corporate name,[25] but this proviso shall not be construed as applying to the name of any corporation adopted prior to August twelfth, 1917.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART I, (Continued)

§114. Prohibited Words in Name.

25. No doubt articles embodying a name containing prohibited words will be rejected by the secretary of state. The obvious purpose of the prohibition is to prevent deception.

While not required by the act, the word "incorporated" may be used as a part of the corporate name. In some states, use of the word "incorporated" is required, upon the theory that it is notice to the public that the company is a corporation. 2 Fletcher Cyc. Corp. §741, p. 1689.

§115. Abbreviations in Name.

Such abbreviations as "Mfg." (for manufacturing) or "Co." (for company) are permissible, although crude and inadvisable.

PART I, CHAPTER 2, SECTION 4

§116. Articles—Special Provisions.

Special Provisions.

The articles may also contain any lawful provision which the incorporators may deem advantageous for the regulation of the business of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, and of the directors, and the rights and privileges of the stockholders or any class or classes of stock and stockholders, including provisions for the better security of preferred stockholders, for the creating of a sinking fund for retirement of preferred stock, and prescribing and limiting the rights of any class or

classes of stockholders to subscribe for increases of stock.[26]

Special Provisions—Continued.

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 2, PART I

26. Special Provisions. See §§96, 97, 98, 99.

PART I, CHAPTER 2, SECTION 5

§117. Local and Foreign Corporations.

Business Office.

(a) Every corporation shall maintain an office in this State, and some person or persons in charge of such office,[27] but it shall be lawful for any such corporation to conduct its business in whole or in part at any place or places within the United States or its possessions or any foreign country,[28] excepting as may be hereinafter otherwise provided; and every corporation may, in its articles of association, or by its by-laws, establish and maintain a principal business office without this State, at which meetings of stockholders or directors may be had as provided by the by-laws;[29]

For corresponding provision of Act 232 of 1903, see Appendix B (9024).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART I

§118. Person in Charge of Office.

27. There seems to be no reason to doubt that the "person" in charge may be another corporation. Our statute

provides that, "The word 'person' may extend and be applied to bodies politic and corporate, as well as to individuals." I. C. L. 1915, §3, sub. 12, p. 292. There is no limit upon the number of corporations which may occupy one and the same office and be represented by one and the same person, natural or corporate.

§119. Rights in Foreign States and Countries.

28. In the absence of express permission to carry on business in a foreign state or country, the right would be possessed, except as limited by charter restrictions. Marshall Corp. p. 1164. But the right is always subject to the laws of such foreign states or countries.

"The corporation, being the mere creature of local law, can have no legal existence beyond the limits of the sovereignty where created. . . . . Having no absolute right of recognition in other states, but depending for such recognition and enforcement of its contracts upon their assent, it follows, as a matter of course, that such assent may be granted upon such terms and conditions as those states may think proper to impose. They may exclude the foreign corporation entirely; they may restrict its business to particular localities, or they may exact such security for the performance of its contracts with their citizens as, in their judgment, will best promote the public interest. The whole matter is in their discretion." Paul v. Virginia, 8 Wall. (U. S.) 168, 19 L. ed. 357, 360 (1868). See also Pollock v. German Fire Ins. Co., 132 Mich. 225, 227 (1903); First National Bank v. Burch, 80 Mich. 242, 247 (1890); Moline Plow Co. v. Wilkinson, 105 Mich. 57, 59 (1895); Imperial Curtain Co. v. Jacob, 163 Mich. 72, 77 (1910); Hastings Industrial Co. v. Moran, 143 Mich. 679, 681 (1906); Houghton Elevator & Machine Co. v. Detroit Candy Co., 156 Mich. 25, 28 (1909); Neyens v. Worthing-

ton, 150 Mich. 580, 587 (1908); Nernst Lamp Co. v. Conrad, 165 Mich. 604 (1911); E. A. Lange Medical Co. v. Brace, 186 Mich. 453 (1915); Swing v. Cameron, 145 Mich. 175 (1906); Goldberg v. Parker, 198 Mich. 396, 398 (1917); Rex Beach Pictures Co. v. Garson Productions, 209 Mich. 692, 702 (1920).

A state, however, has no power to impose burdens upon foreign corporations whose sole business in the state constitutes interstate commerce. To do so would be to invade the field of federal sovereignty. Neyens v. Worthington, 150 Mich. 580, 587 (1908); Standard Fashion Co. v. Cummings, 187 Mich. 196, 202 (1915).

§120. Meetings Outside the State.

29. The validity of meetings of directors held outside the state under such a permissive statute is well established. 3 Fletcher Cyc. Corp. §1865, p. 3054. A more difficult question is encountered in relation to meetings of *stockholders* held outside the state. This is true because, technically, a corporation has no existence beyond the borders of the state by which it was created. "It must dwell in the place of its creation and cannot migrate to another sovereignty." Bank of Augusta v. Earle, 13 Peters (U. S.) 519, 589, 10 L. ed. 274, 308 (1839); Thompson v. Waters, 25 Mich. 214, 220 (1872). *The legislature may authorize the holding of meetings of stockholders outside the state.* 1 Thomp. Corp. (2 ed.) §814, p. 1000; 3 Fletcher Cyc. Corp. §1635, p. 2731; Graham v. Boston, Hartford & Erie R. Co., 118 U. S. 161, 30 L. ed. 196 (1885); see also Cook Corp. (7 ed.) §589, 1738, and Stradley v. Cargill Elevator Co., 135 Mich. 367, 375 (1904). By-laws under the present act should specify with particularity the circumstances under which stockholders' meetings may be held beyond the borders of the state, and the class or classes of business which may be transacted at such meetings.

PART 1, CHAPTER 2, SECTION 5 (Continued)

§121. Term of Existence.

Term.

(b) The term of existence of every corporation shall be not more than thirty years, or such other period as may be fixed by the constitution of this state. Corporations organized without capital stock for religious, benevolent, social or fraternal purposes, may incorporate without fixing any definite term in their articles, and the terms of such corporations shall be deemed to be perpetual, subject to the right of the legislature to alter, repeal or amend this section in accordance with the constitution.[30]

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART I, (Continued)

§122. Duration and Reserved Right of Amendment or Repeal.

30. Except as restricted by the constitution, the legislature has inherent power to authorize formation of such corporations as it may see fit. Mason v. Perkins, 73 Mich. 303, 318 (1889). Under the constitution of 1835, it was held that corporations must be created by special act, and that they could not be authorized by general laws. Green v. Graves, 1 Doug. (Mich.) 351, 356 (1844); Brooks v. Hill, 1 Mich. 118, 122 (1848); Hurlburt v. Britain, 2 Doug. (Mich.) 191, 195 (1846). The constitution of 1850 reversed this policy. Thereafter all corporations were created under general laws, and not by special act. Substantially the same provision appears in the constitution of

1908. (Const. Art. XII, §1). Prior to 1850, there were 48 special charters granted to mining companies in the Upper Peninsula alone. Of these, three were perpetual charters. Mason v. Perkins (ante) 317. Public distrust of corporations here, as elsewhere, induced the limitations imposed by our constitution of 1850, followed by more than half a century of illiberal corporation legislation. In 1921 the legislature seems to have realized, for the first time since 1850, that perpetual charters, subject to the reserved constitutional right of alteration, amendment or repeal, are not a menace to the state.

The reserved right of amendment or repeal (Const. 1908, Art. XII, §1) is an effective right. Of course it cannot be used by any legislature as an excuse for carrying out a confiscatory purpose. State v. Bancroft, 148 Wis. 124, 38 L. R. A. (N. S.) 526; 7 Fletcher Cyc. Corp. §4313, p. 7602. But all contractual rights are subordinate to it. People v. Calder, 153 Mich. 724, 730 (1908), aff'd 54 L. ed. 1163 (1910); Greenwood v. Union Freight R. Co., 105 U. S. 13, 26 L. ed. 961 (1881). As stated by Mr. Justice Cooley: "The reservation of the right leaves the state where any sovereignty would be if unrestrained by express constitutional limitations, and with the powers which it would then possess. It might therefore do what it would be admissible for any constitutional government to do when not thus restrained, but it could not do what would be inconsistent with constitutional principles, and it cannot be necessary at this day to enter upon a discussion in denial of the right of the government to take from either individuals or corporations any property which they may have rightfully acquired. In the most arbitrary times such an act was recognized as pure tyranny, and it has been forbidden in England ever since Magna Charta, and in this country *always.*" Detroit v. Detroit & Howell Plank Road Co., 43 Mich. 140, 148 (1880). See also Commissioner of

Railroads v. Grand Rapids & Indiana R. Co., 130 Mich. 248, 250 (1902); City of Lansing v. Michigan Power Co., 183 Mich. 400, 410 (1914); Township of Sandstone v. Michigan Railway Co., 198 Mich. 234, 246 (1917); Attorney General v. Looker, 111 Mich. 498, 505 (1897). In the case last cited, the following language is adopted: "The reservation of power is broad and comprehensive. Whatever may be its limitation, it at least reserves to the legislature the right to make any reasonable amendments, regulating the mode in which the franchise granted shall be used and enjoyed, which do not defeat or essentially impair the object of the grant, or take away any property or rights which have become vested under a legitimate exercise of the powers granted." See also, Smith v. Lake Shore & Michigan Southern R. Co., 114 Mich. 460, 472 (1897), reversed in 173 U. S. 684, 43 L. ed. 858 (1898); City of Kalamazoo v. Michigan Traction Co., 126 Mich. 525 (1901); Village of Highland Park v. Detroit & Birmingham Plank-Road Co., 95 Mich. 489 (1893); Bissell v. Heath, 98 Mich. 468, 480 (1894).

PART I, CHAPTER 2, SECTION 6

§123. First Meeting—Provisional Officers.

Provisional Officers.

The incorporators in the first instance may elect such provisional officers and directors as they shall agree upon by majority vote;[31] and in such case such provisional officers shall have the necessary authority to act for the incorporators in all matters relating to complying with this chapter as to filing the articles; and upon accomplishing the legal incorporation, they shall have such further powers, duties and responsibilities as devolve upon such officers and directors by law or under the charter and by-laws of

Provisional Officers —Continued.

the corporation, and until their successors are elected and qualify, as hereinafter provided for. If no such provisional officers be elected, the articles of association shall so state, and in such case the incorporators shall name one of themselves, or an attorney in fact,[32] to represent them in filing the articles and to call the first meeting of the stockholders or members for the further organization of such corporation, which meeting shall be held not more than sixty days from such filing. Failure to hold such meeting shall work a forfeiture[33] of all corporate rights of such corporation, unless the Secretary of State shall grant an extension of time for such purpose which shall in no instance exceed an additional thirty days.

For corresponding provision of Act 232 of 1903, see Appendix B (9019).

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 2, PART I

§124. Majority Vote.

31. The statute contemplates that the vote for election of directors shall be by ballot and that "the entire number of directors shall be balloted for at one and the same time, and not separately." (§240.)

In practise, a vote by ballot means a vote by use of "a paper so prepared by printing or writing thereon as to show the voter's choice." In re P. B. Mathiason Mfg. Co., 122 Mo. App. 437, 99 S. W. 502. Such ballots must specify the names of the persons for whom they are cast and the number of votes cast for each person. (Id.) In the absence of objection, a viva voce vote, or a vote by "a show of

hands" is valid, even though the charter or by-laws direct that the vote be by ballot. Wirth v. Fehlberg, 30 R. I. 536, 76 Atl. 438; 1 Thomp. Corp. §911, p. 1123; 3 Fletcher Cyc. Corp. §1650, p. 2767.

A majority vote means a majority of a quorum, in the absence of a charter or by-law provision requiring a greater number. Hill v. Town, 172 Mich. 508, 517 (1912).

§125. Attorney-in-fact.

32. It will be noted that the attorney-in-fact need not be one of the incorporators. (See §94.)

§126. Forfeiture for Delay.

33. The right to insist upon a forfeiture for delay accrues to the State alone. The question cannot be raised by a private individual or in a collateral proceeding. Swartout v. Michigan Air Line R. Co., 24 Mich. 388, 395 (1872).

"In cases almost innumerable it has been decided that the forfeiture of a corporate franchise cannot be collaterally taken advantage of in a private action. The doctrine is as old as the year books and at this late day one would be scarcely listened to who would venture to question it." Mr. Chief Justice Cooley in Grand Rapids Bridge Co. v. Prange, 35 Mich. 400, 403 (1877). See also Wilcox v. Toledo & Ann Arbor R. Co., 43 Mich. 584, 590 (1880); Flint & Fentonville R. Co. v. Woodhull, 25 Mich. 99, 112 (1872); Toledo & Ann Arbor R. Co. v. Johnson, 55 Mich. 456, 460 (1885); Eaton v. Walker, 76 Mich. 579, 586 (1889); Canal Street Gravel-Road Co. v. Paas, 95 Mich. 372, 381 (1893); American Mirror & Glass Beveling Co. v. Bulkley, 107 Mich. 447, 450 (1895); Calkins v. Bump, 120 Mich. 335, 342 (1899); City of Kalamazoo v. Kalamazoo Heat, Light & Power Co., 124 Mich. 74, 82 (1900); International Harvester Co. v. Eaton Circuit Judge, 163 Mich. 55, 67

(1910). No doubt the state may take advantage of the statutory forfeiture, but no obligation rests upon the attorney general to do so unless, in his judgment, public interests demand it. Attorney General v. Gay, 162 Mich. 612, 616 (1910).

PART I, CHAPTER 2, SECTION 7

§127. Official Forms.

Forms.

It shall be the duty of the Secretary of State to prepare various forms suitable and convenient for executing and filing articles of the principal classes of corporations authorized to be incorporated under this act; and further forms for amendments to the same, and for all reports required to be made by such corporations to the Secretary of State or the county clerks. Such forms may be obtained from the Secretary of State upon application therefor, at such price as may be fixed by the Board of State Auditors.[34]

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 2, PART I

§128. Prices of Forms.

34. Subject to change without notice, the price of blanks issued by the Secretary of State is twenty-five cents per set. No charge is made for annual report blanks.

CHAPTER 3

SALE OF ENTIRE CORPORATE PROPERTY, MERGERS, CONSOLIDATIONS, ETC.

(References are to annotator's sections)

Analysis of Chapter 3.

§129. Sale of Entire Corporate Property.
§130. Anti-Monopoly Laws of Michigan.
§131. Anti-Monopoly Laws of United States.
§132. Sale of Entire Assets.
§133. Filing Notice of Sale.
§134. Surrender of Corporate Rights.
§135. Vote on Consolidation.
§136. Consolidations.
§137. Estoppel.
§138. Capitalization of Consolidating Companies.
§139. Unpaid Subscriptions.
§140. Filing Articles of Consolidated Company.
§141. Rights and Liabilities of Consolidated Company.
§142. Suits Against Consolidating Companies.
§143. Duties of Constituent Companies.
§144. Change of Attitude.
§145. Issuing Stock of Consolidated Company.
§146. Cancellation of Unsurrendered Stock.
§147. Holding Shares in Other Corporations.
§148. Power of Corporation to Purchase Its Own Stock.
§149. Power to Purchase Stock of Other Corporations.
§150. Corporation as a Stockholder.
§151. Right of Corporation to Vote.

Subdivision I.—Right to Sell Entire Property.

PART I, CHAPTER 3, SECTION 1

§129. Sale of Entire Corporate Property.

Sale of Entire Assets.

Subject to the laws of this State [1] and of the United States [2] with respect to monopolies and illegal restraints of trade, any corporation may, at any general or special meeting of its stock-

A New Statute

§130. Anti-Monopoly Laws of Michigan.

Section 1. That a trust is a combination of capital, skill or arts by two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce;

2. To limit or reduce the production, or increase or reduce the price of, merchandise or any commodity;

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity;

4. To fix at any standard or figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state;

5. It shall hereafter be unlawful for two or more persons, firms, partnerships, corporations or associations of persons, or of any two or more of them, to make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity, or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers, in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine, or directly or indirectly unite any interests that they may have connected with the sale or transportation of any article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void: Provided however, That nothing contained in the provisions of this act shall be construed to

Consent of Its Capital Stock.

holders, with the consent of three-fourths of its capital stock, sell and convey all its property to any other corporation formed under the same or any similar law for corporate purposes of the same character.[3]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 3, PART I

§130. Anti-Monopoly Laws of Michigan.

1. Chapter 253 C. L. 1915, §15013 et. seq. prohibits trusts, monopolies and restraints of trade.

"Monopoly in trade, or in any kind of business, in this country is odious to our form of government. It is sometimes permitted to aid the government in carrying on a great public enterprise, or public work under government control, in the interest of the public. Its tendency is, however, destructive of free institutions, and repugnant to the instincts of a free people, and contrary to the whole scope and spirit of the federal constitution, and it is not allowed to exist under express provision in several of our state constitutions." Mr. Chief Justice Sherwood in Richardson v. Buhl, 77 Mich. 632, 658 (1889).

Monopoly is accomplished when power to control prices is gained through stifling competition. Attorney General v. National Cash Register Co., 182 Mich. 99, 107 (1914). The illegal control, and not the immediate result of such control, is the evil denounced. Hunt v. Riverside Cooperative Club, 140 Mich. 538, 547 (1905). Where the elements of monopoly exist, proof that prices have been reduced is no answer. Id. The fact that a corporation is violating the anti-monopoly laws of the state cannot be litigated in a collateral proceeding. The state alone can object to the misuser of corporate franchises. International

Harvester Co. of America v. Eaton Circuit Judge, 163 Mich. 55, 67 (1910).

It is not illegal restraint of trade for one to agree in good faith to refrain from reengaging in a business sold and transferred for a valuable consideration, where the only object of the restraint is to protect the vendee in the enjoyment of his purchase. 3 C. L. 1915 §15038, amended Act 171 of 1917, p. 346; Weickgenant v. Eccles, 173 Mich. 695, 700 (1913); Buckhout v. Witwer, 157 Mich. 406, 410 (1909); Peerless Pattern Co. v. Gauntlett Dry Goods Co., 171 Mich. 158, 163 (1912); Grand Union Tea Co. v. Lewitsky, 153 Mich. 244 (1908); Grand Union Tea Co. v. Dodds, 164 Mich. 50 (1910). As to protection of trade secrets, see Dow Chemical Co. v. American Bromine Co., 210 Mich. 262 (1920); E. Bement & Sons v. National Harrow Co., 186 U. S. 70, 46 L. ed. 1058, 1070 (1902).

§131. Anti-Monopoly Laws of United States.

2. The Sherman Act (26 U. S. Stat. §209, 7 Fed. Stat. Ann. p. 336, 8 U. S. Comp. Stat. §8820, p. 9607, Barnes Fed. Code 1919 §7944, p. 1910), supplemented by the Clayton Act (38 U. S. Stat. §730, 8 U. S. Comp. Stat. §8835a et. seq., Barnes Fed. 1919 Code, §7958, p, 1912, 7 Fed. Stat. Ann. p. 346) forms the main body of federal prohibitions against trusts, monopolies and restraints of trade.

The Sherman Act declares that "every contract, combination in the form of trust or otherwise, or conspiracy in restraint of trade or commerce among the several states, or with foreign nations, is hereby declared illegal." The Clayton Act is aimed principally at "price fixing." Both acts are rested upon jurisdiction conferred upon the United States under the broad commerce clause of the federal constitution. See Northern Securities Co. v. United States,

forbid producers of farm and dairy products from co-operating or organizing corporations or associations but primarily for profit, for the purpose of insuring and providing a reasonably certain and stable market for, and distribution of, such products upon terms fair and reasonable to the public and to themselves, and bargaining with distributors of such products singly or collectively in relation thereto, nor shall such co-operative undertaking, corporations, associations or members thereof be held or construed to be illegal combinations or conspiracies in restraint of trade.

HISTORY: A new act by P. A. '25, Act No. 60, effective August 27, '25.

193 U. S. 197, 48 L. ed. 679, 697 (1903); Elliott Machine Co. v. Center, 227 Fed. 124, 126 (1915). For a case in which a bill for an accounting was dismissed because based upon a monopolistic contract, in violation of the Sherman Act, see White Star Line v. Star Line of Steamers, 141 Mich. 604, 611 (1905).

The Clayton Act (§3) provides in substance: "That it shall be unlawful for any person engaged in commerce in the course of such commerce to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale. . . . or fix a price therefor, or discount from, or rebate upon such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in. . . . . commodities of a competitor of the lessor or seller, where the effect. . . . . may be to lessen competition or tend to create a monopoly in any line of commerce."

It has been held that refusal to sell to retailers who have failed to maintain prices is a right inherent in the possessor of goods, and that exercise of the right is lawful. United States v. Colegate, 253 Fed. 522 (1918), and cases there cited. But see Federal Trade Commission v. Beech-Nut Baking Co. (U. S.), 66 L. Ed. . . .

Anti-monopoly laws are not violated by the fact that a corporation uses its profits to expand its business and reduce cost of production, where the object is not monopoly but profit through service. Dodge v. Ford Motor Co., 204 Mich. 459, 499 (1919).

§132. Sale of Entire Assets.

3. This section is a revision of Act 112 of 1889, 3 C. L. 1915 (11350), (11351). The title of that act confined its operation to domestic corporations. Dieterle v. Ann Arbor Paint & Enamel Co., 143 Mich. 416, 421 (1906). Under

the statute as now revised there would appear to be no sound reason why a domestic corporation, by three-fourths vote of its capital stock, may not sell to a foreign corporation organized under a similar law for like purposes and with adequate powers.

In the absence of such a statute, sale of the entire property of a solvent, going concern could not be made over the objection of any dissenting stockholder. Harding v. American Glucose Co., 182 Ill. 551, 64 L. R. A. 738, 769 (1899); 3 Cook Corp. (7 ed.) §670, p. 2163. But where the corporation is an unprofitable, failing enterprise, the majority stockholders, acting in good faith, may authorize sale of company's entire assets without unanimous consent, and in the absence of a permissive statute. Phillips v. Providence Steam Engine Co., 21 R. I. 302, 45 L. R. A. 560 (1899); 3 Cook Corp. (7 ed.) §670, p. 2170; 7 R. C. L. §562, p. 574, 575.

It is a general rule that authority to sell is authority to sell for cash only. Clearly, a majority cannot compel a dissenting minority to accept stock of another corporation in payment of their interest in the selling company. 2 Fletcher Cyc. Corp. §1211, p. 2162; Ferguson v. Meredith, 68 U. S. 25, 17 L. ed. 604, 608 (1863); Mason v. Pewabic Mining Co., 133 U. S. 50, 33 L. ed. 524 (1889). But considerations of expediency and urgency may prevent such a sale from being set aside. Geddes v. Anaconda Copper Mining Co., 222 Fed. 129 (1915).

The old statute was applied in the following cases: Michigan Independent Telephone & Traffic Association v. Michigan Railroad Commission, 190 Mich. 337 (1916); Michigan Telephone Co. v. City of St. Joseph, 121 Mich. 502 (1899); Home Telephone Co. v. Michigan Railroad Commission, 174 Mich. 219, 230 (1913).

Amendment to the Statute

§135. Voting on Consolidation.

SECTION 2. Subject to the limitations of the laws of this State and of the United States with respect to monopolies and illegal restraints of trade, any two or more corporations organized under this or any general law of this State, *or which may be created under the laws of any state or country*, may, by a vote of three-fourths of the legally issued *voting* capital stock of each of said corporations, at any meeting of stockholders duly called to consider the question of such consolidations, notice of which meeting shall be sent by registered mail, postage prepaid, to each stockholder at least thirty days previous to said meeting, agree to unite and consolidate the said corporations. [5] At such meeting the terms upon which the consolidation shall be effected, the valuation of the several properties, and the number of shares of stock in the consolidated corporation to which the stockholders in each of the constituent corporation may be entitled, shall be determined and spread at length upon the records of each of the constituent corporations.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

PART I, CHAPTER 3, SECTION 1 (Continued)

§133. Filing Notice of Sale.

Notice.

Notice of such sale shall be filed with the Secretary of State within thirty days thereafter, and such corporation shall thereupon be deemed to have surrendered its corporate rights, and shall transact no further business excepting such as may be necessary to wind up its corporate affairs.[4]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 3, PART I (Continued)

§134. Surrender of Corporate Rights.

4. Under this provision, sale of total assets operates as an informal dissolution. Thereafter, the corporation automatically continues for the purpose of settling up and closing its affairs, and for that purpose only. (§165.) Ruggles v. Buckley & Douglas Lumber Co., 210 Mich. 58, 65; Bewick v. Alpena Harbor Improvement Co., 39 Mich. 700, 706 (1878); Montgomery v. Merrill, 18 Mich. 338, 343 (1869). Dissolution in this manner does not cut off unpaid creditors. Empire Manufacturing Co. v. Stuart, 46 Mich. 482, 484 (1881). Their claims will remain in force until paid or barred by the statute of limitations. The same is true under the more formal dissolution authorized by Chapter 4, Part I, Subdivision 2 (§189) of this act. Where dissolution is obtained pursuant to the Judicature Act (3 C. L. 1915, Chap. 40, §13563) a creditor may lose his right of participation through delay in proving his claim. (§13614.)

The pre-existing statute 3 C. L. 1915 (11350), (11351) is not expressly repealed. See official form §695.

Subdivision 2.—Consolidations, Etc.

PART I, CHAPTER 3, SECTION 2

§135. Vote on Consolidation.

Consolidations.

Subject to the limitations of the laws of this State and of the United States with respect to monopolies and illegal restraints of trade, any two or more corporations, organized under this or any general law of this State, may, by a vote of three-fourths of the legally issued capital stock of each of said corporations, at any meeting of stockholders duly called to consider the question of such consolidations, notice of which meeting shall be sent by registered mail, postage prepaid, to each stockholder at least thirty days previous to said meeting, agree to unite and consolidate the said corporations.[5] At such meeting the terms upon which the consolidation shall be effected, the valuation of the several properties, and the number of shares of stock in the consolidated corporation to which the stockholders in each of the constituent corporations may be entitled, shall be determined, and spread at length upon the records of each of the constituent corporations.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 3, PART I

§136. Consolidations.

5. Strictly speaking, consolidation always creates a new corporation. 7 Fletcher Cyc. Corp. §4700, p. 8340. The companies absorbed are designated as "consolidating com-

panies"; the resulting corporation is termed the "consolidated company."

The consolidation provisions of Act 84 of 1921 are based upon §8991, et seq., 3 C. L. 1915, relating to consolidation of mining companies. The new act extends the right of consolidation to all domestic corporations.

Primarily, consolidation is dependent upon statutory permission. Peninsular R. Co. v. Tharp, 28 Mich. 505, 506 (1874). At least substantial compliance with the statute is necessary to bring the old stockholders into the new company. As stated by Mr. Justice Campbell: "The objection that these (organization details) were conducted and certified in such a way as to make the new corporations de facto cannot preclude him (a stockholder) from entering upon this inquiry (as to substantial compliance). . . . No change in the corporation which violated any of the substantial statutory conditions could bind a dissenting stockholder, or compel him to submit to the new order of things against his will." Tuttle v. Michigan Air Line R. Co., 35 Mich. 246, 249 (1877); Mansfield, Coldwater & Lake Michigan R. Co. v. Drinker, 30 Mich. 124, 126 (1874). The question raised by the objecting stockholder is not that no lawful corporation has been created, but is this, that the corporation created has not pursued the only course by which it might gain rights as against *him*. (Id.) While it is true that the state alone can raise the question of due incorporation (Shadford v. Detroit, Ypsilanti & Ann Arbor R. Co., 130 Mich. 300, 305 (1902); Meurer v. Detroit Musician's Benevolent & Protective Association, 95 Mich. 451, 455 (1893); Nichols v. Ann Arbor & Ypsilanti Street R. Co., 87 Mich. 361, 368 (1891); Attorney General v. Hanchett, 42 Mich. 436, 438 (1880), it is equally true that a stockholder of a consolidating company, who has not dealt with the consolidated company in such a manner as to estop him, may question the manner in which the

latter has obtained alleged rights against him. 7 Fletcher Cyc. Corp. §4717, p. 8355; 5 Thomp. Corp. (2 ed.) §6055, p. 879.

§137. Estoppel.

A stockholder who has participated in the consolidation without objection is generally held estopped to deny the validity of the result. 5 Thomp. Corp. (2 ed.) §6063, p. 887. The same rule applies to the constituent companies. Id. §6064.

Stockholders are bound by, and cannot be heard to complain of, the statutory provision. Goodspeed v. Wayne Circuit Judge, 199 Mich. 273, 279 (1917); Shumway v. Bennett, 29 Mich. 451, 455 (1874).

PART I, CHAPTER 3, SECTION 3

§138. Capitalization of Consolidating Companies.

Stock Consolidated Companies.

The capital stock and the number of shares in the consolidated corporation may be the same as the aggregate capital stock and number of shares of the several corporations before such consolidation, and such consolidated corporation may call in the unpaid subscriptions[6] on any of the outstanding capital stock of such consolidating corporations; but nothing in this sub division contained shall be construed as preventing the consolidated corporation from capitalizing upon the basis of the actual value of its aggregate assets or from creating any class or classes of shares that may be agreed upon in such consolidation to the same extent as is permitted in this act to other corporations.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 3, PART I

§139. Unpaid Subscriptions.

6. The consolidated company succeeds to the subscription rights of the consolidating companies in the absence of release. 7 Fletcher Cyc. Corp. §4717, p. 8355.

PART I, CHAPTER 3, SECTION 4

§140. Filing Articles of Consolidated Company.

Filing Articles.

The consolidated corporation shall file its articles upon the completion of such reorganization in the same manner and with the same officials as is required by this act of other corporations. Each of the consolidating corporations shall, by its president and secretary, file with the Secretary of State and the appropriate county clerk where its original articles were recorded, a certificate setting forth the text of the agreement of such consolidation,[7] whereupon, excepting for such purposes as are hereinafter provided for, the corporate existence of each of such consolidating corporations shall be deemed to have ceased.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 3, PART I

7. Form of Consolidation Agreement. See §715.

PART I, CHAPTER 3, SECTION 5

§141. Rights and Liabilities of Consolidated Company.

Powers of Companies.

The consolidated corporation so formed shall hold and enjoy all the powers, privileges, rights,

Demands and Estates.

franchises, properties, claims, demands and estates, which at the time of such union may be held and enjoyed by either of the said constituent corporations and be subject to all the dues, demands, contracts, and liabilities existing against either of the same; and all suits at law or in equity, and all proceedings which may be pending, to which either corporation shall be a party, may be prosecuted and defended by the consolidated corporation in the same name, in like manner, and with the same effect as might have been done had such union not have been formed. All claims, contracts, rights, and causes of action of or against either of such constituent corporations, at law or in equity, may be enforced by suit or action, to be commenced and prosecuted by or against the consolidated corporation, and the said constituent corporations shall continue as corporations for the purpose of prosecuting and defending any suits or proceedings pending at the time of such consolidation.[8]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 3, PART I

§142. Suits Against Consolidating Companies.

8. The act provides that suit shall lie against the consolidated corporation for the obligations of the constituent companies. The act also provides that, after the consolidation, the "consolidating corporations shall be deemed to have ceased"; also that the constituent corporations shall "continue as corporations for the purpose of prosecuting and defending any suits or proceedings pending at the time of such consolidation." Query: May suit be brought against a consolidating corporation, after consolidation, for recovery of a pre-existing obligation?

It is a general rule that a creditor has a right to rely upon his contract as made, and that he cannot be required to accept a substituted obligor unless he consents to do so. Weingarden v. Folly Theater Co., 189 Mich. 220, 224 (1915). To constitute a novation there must be an agreement on the part of the creditor to the effect that the original debtor shall be discharged and that another shall be substituted in his stead. Fuller & Rice Lumber & Mfg. Co. v. Houseman, 117 Mich. 553 (1898); Piehl v. Piehl, 138 Mich. 515, 518 (1904); Wierman v. Bay City Michigan Sugar Co., 142 Mich. 422, 439 (1905); Harrington-Wiard Co. v. Blomstrom Mfg. Co., 166 Mich. 276, 287 (1911); Detroit Postage Stamp Service Co. v. Schermack, 179 Mich. 266, 275 (1914). "Yet not a few courts hold that, where a corporation is consolidated with another under a new name, it ceases to exist as a corporation, and an action pending against it cannot afterwards be prosecuted by or against it, or in its original name." 5 Thomp. Corp. (2 ed.) §6113, p. 944. 7 Fletcher Cyc. Corp. §4803, p. 8430. Under the present act the consolidating corporations are deemed to have "ceased," but they may prosecute and defend pending actions. Therefore they still exist. And there is authority for saying that, "a creditor of the old company is not bound to resort to the new company." 7 Fletcher Cyc. Corp. §4744, p. 8383. We conclude that he may sue the old company if he so elects. In a large majority of cases, it will be the better procedure to sue the consolidated company, which has the assets and against which execution may be taken with some prospect of its satisfaction. Equity will, however, follow the assets. They are a trust fund for the benefit of preexisting creditors. 5 Thomp. Corp. (2 ed.) §6105, p. 932. See also Shadford v. Detroit, Ypsilanti & Ann Arbor R'y, 130 Mich. 300, 307 (1902).

Where the consolidated company is sued for the debt

of a consolidating company, the consolidation should be fully alleged and proved.

PART I, CHAPTER 3, SECTION 6

§143. Duties of Constituent Companies.

Powers of Officers.

The officers of the constituent corporations shall continue to exercise, in behalf of the corporation so to be formed, all their rights and powers, until the consolidated corporation shall be organized; and thereafter each of the said constituent corporations shall continue, for the purpose of perfecting the said union, and of doing all such acts and things as may be necessary therefor; and shall execute all such transfers, conveyances and assignments, as the consolidated corporation may deem necessary or expedient to vest itself of any property, estates, contracts, rights, or claims which do not vest in it by operation of law.[9]

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 3, PART I

§144. Change of Attitude.

9. While it is clear that consolidating companies continue undissolved for certain purposes, there can be no doubt that, by the fact of consolidation, they have undergone a change of attitude toward the state. They should therefore file the notice of change of attitude prescribed by §167 of this chapter. The filing of this statutory notice does not operate to dissolve the company. Simms v. Bialy Hardware & Supply Co., 187 Mich. 375, 377, 383 (1915). See also Calkins v. Bump, 120 Mich. 335, 342 (1899).

PART I, CHAPTER 3, SECTION 7

§145. Issuing Stock of Consolidated Company.

Calling in Certificates.

Any corporation formed by consolidation under this subdivision shall have power to call in and cancel the certificates of stock of the several corporations so consolidating, and to make and issue to its stockholders new certificates of stock in the consolidated corporation, in such proportions to each as each shall be entitled to, according to the terms of consolidation as agreed upon, and to cancel the stock of any stockholder who shall not return his stock to be cancelled, as aforesaid, within thirty days after actual notice of the resolution of the corporation for calling in such stock, or who shall not return his stock after publication of notice of said resolution once in each week for four successive weeks in some daily paper published in the county where the principal business office of the company is located: *Provided,* That in every case where stock is so cancelled without return of stock for cancellation, it shall be the duty of the treasurer of such consolidated corporation to forthwith deposit with the Secretary of State the equivalent certificates of stock in such consolidated corporation properly executed, and ready for delivery upon the demand of such person or persons whose original stock was so cancelled.[10]

Proviso.

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 3, PART I

§146. Cancellation of Unsurrendered Stock.

10. The stock certificate is not the stock. The certificate

is merely evidence of title to stock, as a deed is evidence of title to land. Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co., 170 Mich. 205, 225 (1912). The statute authorizes cancellation of "stock" remaining unsurrendered after due notice.

Is this power to cancel valid as against a pledgee? The pledgee holds under no better title than was possessed by his pledgor at the time when the pledge was made. 6 Fletcher Cyc. Corp. §3910, p. 6648. The rights of the owner, and hence of his pledgee, are subject to the statute authorizing consolidations. Their vested rights are not invaded by exercise of the statutory powers to which they are subordinate. The pledgee is charged with notice of the law. Citizens State Bank of Monroeville v. Kalamazoo County Bank, 111 Mich. 313, 320 (1896); Michigan Trust Co. v. State Bank of Michigan, 111 Mich. 306, 312 (1896); Oakland County Savings Bank v. State Bank of Carson City, 113 Mich. 284, 286 (1897). No doubt the pledgee would be entitled to receive the "equivalent certificates."

PART I, CHAPTER 3, SECTION 8

Subdivision 3.—Subsidiary Corporations.

§147. Holding Shares in Other Corporations.

Power to Hold Shares.

Subject to the limitations of the laws of this State and of the United States with respect to monopolies and illegal restraints of trade, any corporation organized for pecuniary profit shall have power, in furtherance of the objects of its existence, to purchase and hold shares of stock of other corporations organized under the laws of this or any other state for purposes similar to those of such corporation.[11]

For corresponding provision of Act 232 of 1903, see Appendix B (§9030).

Amendment to the Statute

§147. Holding Shares in Other Corporations.

SECTION 8. Subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade, any corporation organized for pecuniary profit, *or organized on a stock share basis not for pecuniary profit,* shall have power in furtherance of the objects of its existence, to purchase and hold shares of stock of other corporations organized under the laws of this or any other state (*jurisdiction or sovereignty*), for purposes similar to those of such corporation. *Provided, Any cooperative agricultural marketing association or company organized for profit may hold and acquire stock or membership in a cooperative agricultural marketing association not organized for profit.*[11]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 153, effective August 30, '23, as amended by P. A. '25, Act No. 363, effective August 29, '25.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 3, PART 1

The title "Subsidiary Corporations" is a misnomer. As originally drawn, the bill contained a proviso confining the operation of §8 (§147) to subsidiary companies, as in Act 254 of 1917, p. 532. The legislature struck out the proviso, but neglected to amend the title of the subdivision.

§148. Power of Corporation to Purchase Its Own Stock.

11. It has been held in Michigan that: "A corporation acting in good faith, without objection from stockholders and without prejudice to creditors, may purchase shares of *its own stock,* regardless of the purpose for which it was organized, unless forbidden by statute." Cole v. Cole Realty Co., 169 Mich. 347, 350 (1912).

This is undoubtedly the law in Michigan upon this subject. As stated by Judge Thompson in his work on Corporations: "The rule established *by the undoubted weight of authority* is that corporations, without express authority, and when not prohibited by their own charter, or by statute, may buy and sell their own shares, provided they do so in good faith without intending to injure, and without in fact injuring, their creditors." 4 Thomp. Corp. (2 ed.) §4075, p. 622. To the same effect see 2 Fletcher Cyc. Corp. §1136, p. 2093, where it is stated that: "In most jurisdictions, the doctrine that a corporation cannot purchase and hold its own stock, unless expressly authorized to do so, is not recognized. On the contrary, most of the courts in which the question has arisen have held that it may do so without express authority, in the absence of express restrictions, provided it acts in good faith and without prejudice to the rights of creditors."

That the purchase must be in good faith and not to the injury of present *or future* creditors, see Clark v. E. C. Clark Machine Co., 151 Mich. 416, 424 (1908); McIntyre v. E. Bement's Sons, 146 Mich. 74 (1906). In the Clark case (ante) it was held that stockholders who, without objection, have participated in the transaction will not be heard to complain. In other words, the ordinary rules of estoppel apply. Butterworth & Lowe v. Kritzer Milling Co., 115 Mich. 1 (1897). In Lufkin Rule Co. v. Secretary of State, 163 Mich. 30, 32 (1910) the question of the right of a corporation, formed under Act 232 of 1903, to purchase its own stock was raised but was not decided.

Mr. Cook states the rule, with considerable caution, as follows: "And, indeed, if there is no statutory liability on stock, and if stockholders do not object, there is no reason why the *net profits* of a corporation should not be applied to purchasing its stock, instead of being used for a dividend." 1 Cook Corp. (7 ed.) §311, p. 887, 888. This statement is in accord with the spirit of the Cole case (ante), and is believed to be a safe statement of the rule in Michigan.

While Act 84 of 1921 does not expressly authorize purchase by a corporation of its own common stock, there is a provision for the conversion of preferred stock into "common stock, bonds, or other securities, or any other class of stock on terms clearly set forth in the articles and expressed in the certificates therefor." (§281.) In other words, as to *preferred stock,* the corporation is given express power to purchase and to incur indebtedness for that purpose.

§149. Power to Purchase Stock of Other Corporations.

This section of the act (§147) enlarges the powers originally provided by Act 254 of 1917, which authorized the holding of shares of subsidiary companies only.

"The prevailing doctrine is that a corporation has no power either to subscribe for, or to purchase, shares of stock in another corporation, unless such power is expressly conferred upon it by its charter or other statute, or unless the circumstances are such that the transaction is a necessary or reasonable means of carrying out or accomplishing the objects for which it was created." 2 Fletcher Cyc. Corp. §1117, p. 2067. See also Marshall Corp. 248; 1 Cook Corp. (7 ed.) §314, p. 901; 4 Thomp. Corp. §4056, p. 605; Report of Attorney General (Kuhn), 1911, p. 332, 333; Report of Attorney General (Oren) 1903, p. 58; 7 R. C. L. §535, p. 552. This is believed to be the rule in Michigan. The question has been raised in several cases (O'Brien v. Dunn Iron Mining Co., 141 Mich. 616, 521 (1905); Emery v. Kalamazoo & Hastings Construction Co., Limited, 132 Mich. 560, 572 (1903); Woodcock v. First National Bank of Niles, 113 Mich. 236, 238 (1897); Dewey v. Toledo, Ann Arbor & North Michigan R. Co., 91 Mich. 351, 361 (1892), but no case has been found directly deciding it.

The courts will find no difficulty in sustaining ownership of stock in other corporations by companies formed under Act 84 of 1921. Home Telephone Co. v. Michigan Railroad Commission, 174 Mich. 219, 230 (1913); Dewey v. Toledo, etc., R. Co. (ante). But there is no reason to believe that the power expressly conferred will be extended by construction to embrace purchases of stock outside the limits fixed by the legislature. (See §§147, 150.)

It is, of course, always to be remembered that a corporation has power, in the absence of express prohibition, to purchase its own stock, or the stock of another corporation, or any other class or classes of property when such purchase becomes necessary for the purpose of avoiding impending loss. Thompson v. Waters, 25 Mich. 214, 231 (1872); Marshall Corp. p. 258; 2 Fletcher Cyc. Corp. §1129, p. 2085; 7 R. C. L. §538, p. 555.

PART I, CHAPTER 3, SECTION 9

§150. Corporation as a Stockholder.

Representation.

When any such corporation shall be a stockholder in any other corporation, as in this subdivision provided, its president and other officers or any of its directors shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers, privileges and liabilities of individual owners or holders of such stock.[12]

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 3, PART I

§151. Right of Corporation to Vote.

12. It is well settled that a corporation cannot vote upon shares of its own stock owned by it, either unissued, or issued in the name of a trustee. 3 Fletcher Cyc. Corp. §1673, pp. 2809, 2810.

As a general rule, a corporation having statutory permission to hold stock in another corporation is entitled to vote upon such stock to the same extent as the like right might be enjoyed by an individual. Bigelow v. Calumet & Hecla Mining Co., 167 Fed. 721 (1909). But if it shall clearly appear that the purpose of such voting is monopolistic, exercise of the power may be restrained. Bigelow v. Calumet & Hecla Mining Co., 155 Fed. 869 (1907); 7 R. C. L. §324, p. 344. It is not necessary that the monopoly sought should be complete, to be illegal. "It is sufficient if it really tends to that end and to deprive the public from

advantages which flow from free competition." United States v. E. C. Knight Co., 156 U. S. 1, 39 L. ed. 325, 330 (1895); Hunt v. Riverside Co-operative Club, 140 Mich. 538, 548 (1905).

A corporation which has no legal power to hold stock in another corporation has no legal right to vote upon stock held. 3 Fletcher Cyc. Corp. §1672, p. 2808.

CHAPTER 4

EXTENSION OF CORPORATION TERMS AND VOLUNTARY DISSOLUTIONS

(References are to annotator's sections)

Analysis of Chapter 4.

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§153. Extension of Duration.
§154. Renewal After Expiration.
§155. Extension After Expiration of Term.
§156. Holdover Officers and Directors.
§157. Assumption of Accrued Penalties.
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§159. For Provisions Relating to Amendment of Articles.
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§187. Voluntary Dissolution—Final Acts.
§188. Process to Compel Production.
§189. Rights of Creditors After Dissolution.
§190. Remedies After Dissolution.

Subdivision 1.—Extension of Corporate Life and Change of Attitude.

PART I, CHAPTER 4, SECTION 1

§152. Renewal Before Expiration.

Extension of Term.

Any stock corporation whose term is about to expire by limitation, may, at any time within two years next preceding the expiration of such term, by the consent of at least two-thirds of its capital stock at any annual meeting or at any special meeting of its stockholders called for that purpose, direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution it shall be the duty of the president and secretary to make, sign and acknowledge in triplicate new articles to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles shall be filed where original articles are required to be filed by this act.[13]

For corresponding provision of Article 232 of 1903, see Appendix B (9048). (For form, see §696.)

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 4, PART I

§153. Extension of Duration.

13. The constitution (Art. XII, §3) imposes no limit upon the number of renewals, but expressly provides that the

legislature may authorize "one or more extensions." The act evidently contemplates successive renewals. The new term dates "from the expiration of its former term"—not necessarily its *first* term.

In the absence of the permissive constitutional provision, the legislature would have been powerless to grant extensions beyond the original maximum term of thirty years. Seneca Mining Co. v. Osmun, 82 Mich. 573, 575 (1890); Attorney General v. Perkins, 73 Mich. 303 (1889); Rockwith v. State Road Bridge Co., 145 Mich. 455, 458 (1906).

PART I, CHAPTER 4, SECTION 2

§154. Renewal After Expiration.

Renewal.

Any such stock corporation whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may with the consent of at least four-fifths of its capital stock, renew its corporate existence in the same manner as is provided in this chapter in relation to a corporation whose term is about to expire,[14] and it shall be the duty of the officers and directors de facto,[15] to do and perform all things required of such officers and directors de jure as provided in this subdivision, in relating to calling a special meeting of the stockholders and submitting the question to them of renewing the corporate existence, and the filing of renewed articles. But no such corporation de facto shall be permitted to renew its corporate life unless such action is taken within three years next after its term has expired, and such renewal shall in no wise relieve

Amendment to the Statute

§154. Renewal After Expiration.

SECTION 2. Any such stock corporation whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may with the consent of at least four-fifths of its capital stock, renew its corporate existence in the same manner as is provided in this chapter in relation to a corporation whose term is about to expire, [14] and it shall be the duty of the officers and directors de facto, [15] to do and perform all things required of such officers and directors de jure as provided in this subdivision in relation to calling a special meeting of the stockholders and submitting the question to them of renewing the corporate existence, and the filing of renewed articles. But no such corporation de facto shall be permitted to renew its corporate life unless such action is taken within three years next after its term has expired, and such renewal shall in no wise relieve such corporation from any penalties that may have accrued against it under any law of this state, [16] but such renewals shall entitle the corporation to all the rights, privileges, immunities and powers conferred upon corporations renewing their corporate existence before or at the expiration of their term. *Any domestic stock corporation organized under any laws heretofore in force, whose term has expired but which has not been wound up or dissolved and which has nevertheless continued its active business beyond such term, whose corporate term has, prior to the passage of this act, been directed to be continued by a vote of at least four-fifths of its capital stock expressed at any annual meeting or a special meeting of the stockholders called for that purpose, shall continue to be the same corporation for the renewed term thereof, with all its property, franchises, rights, privileges and powers.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 363, effective August 27, '25.

such corporation from any penalties that may have accrued against it under any law of this state,[16] but such renewal shall entitle the corporation to all the rights, privileges, immunities and powers conferred upon corporations renewing their corporate existence before or at the expiration of their term.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 4, PART I

§155. Extension After Expiration of Term.

14. Until 1889 there was no constitutional authority for any extension of corporate terms of the classes of corporations whose existence was limited to thirty years. At the April election in 1889, a constitutional amendment was adopted which, in substance, was later embodied in §3 of Art. XII of the constitution of 1908, upon which the present act is founded. The legislature did not, however, immediately avail itself of the new constitutional power to provide for the resurrection of corporations whose charters had been, or might be, permitted to expire without renewal [(Act 328 of 1905, p. 506, 3 C. L. 1915, (11360) et seq.; also 2 C. L. 1915, (9048) and (9085)], although the legislature had several times recognized that revival was possible. (3 C. L. 1915 (10900); also Act 117 of 1911.) It was reserved to the present act to make the constitutional permission fully effective. Previously, renewal was made, if at all, prior to expiration of the term, and it was held that a dead corporation could not be revived in the absence of legislative authority. Report Attorney General (Fellows) 1913, p. 222; Report Attorney General (Maynard) 1896, p. 115.

§156. Holdover Officers and Directors.

15. It will be remembered that under this statute, and prior statutes [3 C. L. 1915 (11335)] corporations continue to be bodies corporate for three years after expiration, for purposes of liquidation (§165). During this period the last officers and directors hold over (Mason v. Pewabic Mining Co., 25 Fed. 882, 884 [1885]) or new officials may be elected.

§157. Assumption of Accrued Penalties.

16. The most probable penalty is that which may arise from failure to file annual reports and pay privilege fees. The question will arise: When, under the provisions of Act 85 of 1921 (or any similar act) does a corporation's duty to file annual reports and pay the specific excise tax cease?

Under the 1921 act above mentioned, the duty falls upon corporations "organized or doing business." When a corporation's charter expires, it ceases to be organized in the sense of enjoying a franchise to be a corporation, and it has no further right to transact business generally or constructively, but is narrowly limited to the business of liquidation. Bewick v. Alpena Harbor Co., 39 Mich. 700 (1878); Mason v. Pewabic Mining Co., 25 Fed. 882 (1885), 133 U. S. 50, 33 L. ed. 524; 5 Thomp. Corp. (2 ed.) §6576, p. 1371. Although the 3-year statute permits a dead corporation to administer its own estate within that period, nevertheless the corporation is dead. Marshall Corp., p. 443; Attorney General v. Gay, 162 Mich. 612 (1910). This being true, it cannot be assumed that the legislature intended to exact business reports of a concern out of business, nor privilege fees for the enjoyment of franchises no longer possessed.

That reports are not demandable after dissolution, see

Gold v. Clyne, 134 N. Y. 262, 17 L. R. A. 767 (1892); 4 Fletcher Cyc. Corp. §2896, p. 4190.

PART I, CHAPTER 4, SECTION 3

§158. Renewal Non-Stock Corporations.

Renewal Non-stock Corporations.

Any corporation without capital stock, incorporated under this or any other law of this state whose term of existence has expired or is about to expire, may renew such corporate existence at any meeting of the members of such corporation called for that purpose, notice of which shall have been given in the same manner and published for the same length of time as is required in this act in the case of amendments to the articles of such corporations.[17] In case the corporate existence has not yet expired, such meeting may be held at any time within two years next preceding such date of expiration, and in case such existence has expired, such meeting shall be held within two years next following such date of expiration. No such corporate life shall be renewed excepting by the affirmative vote of two-thirds of the members[18] present at such meeting. The articles shall thereupon be renewed and filed as provided in section 1 of this chapter.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 4, PART I

§159. For Provisions Relating to Amendment of Articles.

17. See, as to increase or decrease of capital stock, Part II, Chap. 1 (§310); as to other amendments, Part II, Chap.

1 (§244). Such amendments may be adopted "at any annual meeting, or at any special meeting, called for that purpose." The statute prescribes no particular method by which such meetings are to be called. Publication is not required. It follows that any notice which will be sufficient to properly convene a meeting will satisfy the statute. Nothing more is required. The by-laws or articles should prescribe the time and character of notice required for general and for special meetings.

For form of by-laws, see §§721, 722.

§160. Members.

18. The membership of a non-profit corporation "may be limited as to number or qualifications as fixed in the articles or by-laws." (Part III, Chap. 1, §397).

"Membership . . . . . shall be governed by such rules of admission, retention and dismissal as the articles or by-laws shall prescribe, provided that all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members." (§403.)

Members of such corporations are equally privileged as to voice and vote, except that in organizations having stock, votes may be upon the basis of shares.

One who becomes a member of such an association under this statute is bound by reasonable, after-enacted by-laws. Borgards v. Farmers' Mutual Insurance Co., 79 Mich. 440; Highland Park Association v. Boseker, 169 Mich. 4, 9 (1912). And whether or not such by-laws are reasonable, is a question of fact to be determined by a jury. Id.

Part I, Chapter 4, Section 4

§161. Perpetual Charters.

Perpetual Charters.

The corporate existence of all corporations, heretofore incorporated or incorporating under

Religious Purposes.

this act without capital stock, for religious, benevolent, social or fraternal purposes, shall be deemed to be in perpetuity, notwithstanding any limitation or term fixed in the articles or in the law under which such corporation originally incorporated, and it shall not hereafter be necessary for any such corporation to formally renew its corporate existence, but every such corporation shall be deemed to have perpetual succession unless it shall, in any particular case, after the passage of this act, affirmatively waive the right to perpetual existence, and shall fix a definite term in its articles.[19]

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 4, PART I

§162. Certain Corporations Made Perpetual.

19. All existing religious, benevolent, social or fraternal corporations having no capital stock (as well as all hereafter to be organized) are *made perpetual* by operation of this act, unless they renounce such right and fix a definite term in their articles. (§161.)

This is a new provision based upon §3 of Art. XII of the state constitution, and upon the inherent power of the legislature, when unrestrained, to set up perpetual corporations. The provision is useful. The state is fully protected by its reserved constitutional right of amendment and repeal. Trustees of Dartmouth College v. Woodward, 4 Wheaton (U. S.) 519, 4 L. ed. 629, 668 (1819); Looker v. Maynard, 179 U. S. 44, 45 L. ed. 79, 81 (1900). By accepting the charter, the burdens as well as the benefits of the law are adopted by the corporation. Attorney General v. Erie & Kalamazoo R. Co., 55 Mich. 15, 27 (1884).

PART I, CHAPTER 4, SECTION 5

§163. Continuity of Renewed Corporations.

Identity after Renewal.

Any corporation which has thus been renewed shall be the same corporation,[20] shall hold and own all the rights, franchises and property held and owned by the corporation before renewal, be subject to all its liabilities, and have the same stockholders, members and officers.

For corresponding provision of Act 232 of 1903, see Appendix B (9048).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 4, PART I

§164. Identity of Renewed Corporation Preserved.

20. When a charter is renewed, there is no break in the continuity of the original corporation. Property vested in the original company at the time of expiration of its charter continues to be the property of the renewed corporation, without the necessity for any transfer or other formality. 1 Fletcher Cyc. Corp. §413, p. 894; 5 Thomp. Corp. (2 ed.) §5982, p. 806.

PART I, CHAPTER 4, SECTION 6.

§165. Three Years Liquidation Period.

Three Year Extension.

All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the further term of three years, for the purpose of prosecuting and defending suits by or against them, and

Amendment to the Statute

§165. Three Years Liquidation Period.

SECTION 6. All corporations whose charters shall expire by their own limitations or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the further term of three years, for the purpose of prosecuting and defending suits by or against them, *if not in default under Chapter Two of Part Five of this act, and* of enabling them gradually to settle and close their affairs, and to dispose of and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations were organized.[21]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

of enabling them gradually to settle and close their affairs, to dispose and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations were organized.[21]

Closing Their Affairs.

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 4, PART I

§166. Three Years for Liquidation.

21. This provision, with slight changes in phraseology, has been upon the statute books of this state since 1846. Revised Stat. 1846, §8, p. 212; I. C. L. 1857, §2150, p. 701; I. C. L. 1871, §3435, p. 1150; I. H. S. §4867, p. 1244; 3 C. L. 1897, §8534, p. 2627.

"The object of this clause was not to limit, but to enlarge the corporate privileges, so that corporations whose existence for general purposes was nearing its end might enjoy the advantage of doing business during the whole charter period, instead of being compelled to begin winding up their affairs before it ended." For this reason, it is held not *ultra vires,* however unwise, for a board of directors to continue making investments in improvements up to the date when the charter expires. Ruggles v. Buckley & Douglas Lumber Co., 210 Mich. 58, 65 (1920). Suit may be maintained or defended in the corporate name during this 3-year period. Bewick v. Alpena Harbor Co., 39 Mich. 700 (1878); Empire Mnfg. Co. v. Stuart, 46 Mich. 482 (1881); People v. Grand Rapids Sticky Fly Paper Co., 144 Mich. 221 (1906). A corporation dissolved by a decree in chancery pursuant to the statute authorizing voluntary dissolution [see Judicature Act of 1915, 3 C. L. 1915, (13563)] does not enjoy continued existence after

dissolution. It is held that the 3-year statute is inapplicable to that situation. Jacobs v. E. Bement's Sons, 161 Mich. 415, 417 (1910).

See Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd Ed. (13563).

It has been held that the directors continue as such, and do not become merely liquidating trustees, during the 3-year period. But, "Nevertheless, the corporation itself, and the directors officially, for the purposes of the statute, were trustees for the creditors and stockholders, and were bound to exert all their powers in the disposition of the property for the equal benefit of those equally entitled." Mason v. Pewabic Mining Co., 25 Fed. 882, 884 (1885), modified in other respects in 133 U. S. 50, 33 L. ed. 524.

PART I, CHAPTER 4, SECTION 7

§167. Filing Notice of Change of Attitude.

Filing Notice.

In any case where a corporation shall be dissolved by process of law or whose term of existence shall terminate by limitation and not be renewed, or whose property and franchise shall be sold at mortgage sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles without a formal dissolution, it shall be the duty of the last board of directors thereof within thirty days thereafter to file a certificate to such effect with the Secretary of State signed by a majority of the remaining members of such board and accompanied with the fee prescribed, which certificate shall be filed or recorded along with the original articles.[22] In case of neglect or refusal to file such certificate as aforesaid, each of said directors shall

be subject to a penalty of five dollars for each and every day during the continuance of such neglect or refusal to be collected in an action brought therefor by the Attorney General.[23] Penalty.

For corresponding provision under Act 232 of 1903, see Appendix B (9038). For form, see §695.

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 4, PART I

§168. Fee for Filing Notice of Change of Attitude.

22. Under Act 232 of 1903, a filing fee of fifty cents was charged. 2 C. L. 1915, (9028).

Under Act 85 of 1921, §1, the fee "for filing and examining any notice of final dissolution or *change of attitude,* the Secretary of State is entitled to receive from the corporation at the time of filing, or when the service is rendered," a fee of *five dollars.* (§§104, 675.)

§169. Liability of Directors for Failure to File Notice of Change of Attitude.

23. Obviously this is a penal statute, and therefore it is to be strictly construed. Deloria v. Atkins, 158 Mich. 232, 241 (1909). "Before anyone can be held bound by a statutory provision of a penal character, it must satisfactorily appear that the legislation has rendered him subject thereto." Id. There can be no liability without a "*neglect* or *refusal* to file such certificate." The directors are bound to take notice of the statute and to know when such a certificate is due. Continental & Commercial Bank v. Emery, 178 Mich. 612, 617 (1914); American Brass Co. v. Emery, 189 Mich. 593, 594 (1915). The duty is imposed upon "the last board of directors"—not upon the

corporation. It is therefore directly the duty of each director, if he would avoid liability, to join in causing a proper certificate to be made, and in seeing that the certificate is filed. In case of default, it is believed that proof that the certificate was executed and delivered to the secretary for filing, would not absolve the directors if the secretary failed to file it. The defense urged in the case of Deloria v. Van Winkle, 162 Mich. 660, 662 (1910) would not be available.

The fact that the certificate is eventually filed does not affect the attaching of the penalty for the period of default. Reuter Hub & Spoke Co. v. Hicks, 181 Mich. 250, 254 (1914).

Subdivision 2.—Winding up Corporate Affairs—Voluntary

PART I, CHAPTER 4, SECTION 8

§170. Voluntary Dissolution.

Dissolution.

In addition to the methods[24] provided in the Judicature Act,[25] so-called, for winding up, dissolving or otherwise terminating the corporate existence of any corporation of this State, any solvent corporation, the stockholders or members of which shall desire to cease doing business, surrender their franchise and wind up their corporate affairs, may do so by the following procedure: Notice of such intention[26] shall be published in the call for the meeting of the stockholders or members, whether a regular or special meeting, and at such meeting the question of winding up, dissolving and terminating the existence of such corporation shall be submitted to such stockholders or members in a resolution. The adoption of such resolution shall require an affirmative vote of two-thirds of the

Notice.

capital stock [27] or of two-thirds of the members in non-stock corporations. Upon the adoption of such resolution, the stockholders or members may appoint three or more of the directors or trustees [28] to make an audit of the books, accounts and papers, and to make an inventory and appraisal of the property of such corporation, which audit and inventory shall be filed with the board. Upon receiving such audit and inventory, the board [29] shall proceed to liquidate all of the debts and obligations of the corporation, and to sell the property, rights, franchises, to collect all claims due the corporation, and reduce all of such assets to possession.

Non-Stock Corporations.

Audit.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 4, PART I

§171. A New Method of Dissolution.

24. Hitherto, the voluntary dissolution of a corporation in this state has been possible under certain circumstances, determination of which was primarily a function of the board of directors. 3 C. L. 1915, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed. (13563), p. 4752; Calkins v. Bump, 120 Mich. 335, 342 (1899).

The present method of dissolution is new in this jurisdiction. It is distinguished from the former method by the following characteristics:

(a) The determination to dissolve is by the stockholders;
(b) The corporation to be dissolved must be solvent;
(c) The proceeding may be wholly non-judicial; and
(d) It is available to all solvent corporations not excluded from the operation of the act.

The design is to permit the stockholders, acting through

their board of directors, to do for themselves all that has heretofore been accomplished through a receiver. Where there is confidence and harmony between the board and the stockholders the method is practical. A similar statute has stood for many years as a part of the national banking act. 13 U. S. Stat. 112, 9 U. S. Comp. Stat. 1916, §9806, p. 12036; Central National Bank of Baltimore v. Connecticut Life Ins. Co., 104 U. S. 54, 26 L. ed. 693 (1881); Wyman v. Wallace, 201 U. S. 230, 50 L. ed. 738 (1906); George v. Wallace, 135 Fed. 286 (1904); Poppleton v. Wallace, 201 U. S. 245, 50 L. ed. 743 (1906).

§172. Dissolution Under the Judicature Act.

25. The chapter on Voluntary Dissolution of Corporations, embodied in the Judicature Act of 1915 [3 C. L. 1915, Chap. 40 and Cummins and Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., (13563)] is unwieldy because incomplete in itself. Much of the necessary machinery involved must be found in the chapter on Assignments for the Benefit of Creditors. [3 C. L. 1915, Chap. 42, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., (13604) et seq.] "The provisions of law regulating common law assignments with reference to sales of property, notice to creditors to prove claims, the proving, contesting and allowing of claims, the making of set-offs, the powers of the court . . . . the making and filing of accounts, the closing of the estate, the distribution of dividends and the compensation of the receiver, shall apply and be followed," except in certain particulars. 3 C. L. 1915, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., (13568).

Voluntary dissolution under the Judicature Act of 1915 is permissible when a majority of the managing board determines,

(a) That the company is insolvent, or
(b) Unable to reasonably secure its creditors, or
(c) When dissolution is deemed beneficial to the stockholders.

After notice (13565) and upon hearing (13566) the court determines the truth of the grounds of dissolution alleged, and, if he finds the allegations sustained, and that dissolution will not be "injurious to the public interest," a decree will be entered dissolving the corporation and appointing a receiver, or receivers, in whom title to the corporate property vests (13568); Jacobs v. E. Bement & Sons, 161 Mich. 415, 420 (1910). "All the subsequent proceedings go upon the basis that there is no longer any corporation, and they are intended to secure the collection and distribution of assets in complete analogy to the proceedings concerning the estates of deceased persons, and concerning insolvent estates." Cady v. Centreville Knit Goods Mfg. Co., 48 Mich. 133, 137 (1882). After entry of the decree of dissolution, the corporation is dead. Detroit Trust Co. v. Goodrich, 175 Mich. 168, 172 (1913).

While the proceeding is pending, and prior to dissolution, creditors may bring suits and make levies. In re Abbott, 187 Mich. 229, 235 (1915); Abbott v. Wayne Circuit Judge, 182 Mich. 61 (1914). And the receiver takes the corporate property subject to the levies made prior to the time of his appointment. Travis v. McBride, 166 Mich. 126, 129 (1911). Judgment creditors, under such circumstances, may intervene in the dissolution proceeding for the purpose of moving the court to protect their rights. In re Abbott, 187 Mich. 229, 236 (1915).

Voluntary dissolution, accomplished by majority interests for the purpose of absorbing the minority interests, is inadmissible. Paine v. Saulsbury, 200 Mich. 58, 66 (1918).

Where the corporation is not insolvent, a common allegation is "that the purposes for which the corporation was

formed cannot be attained." See Minor v. Belle Isle Ice Co., 93 Mich. 97, 112, where Mr. Justice McGrath stated: "It has been held that, when it turns out that the purposes for which a corporation was formed cannot be attained, it is the duty of the company to wind up its affairs; that the ultimate object of every ordinary trading corporation is the pecuniary gain of its stockholders; that it is for this purpose, and no other, that the capital has been advanced; and if circumstances have rendered it impossible to continue to carry out the purpose for which it was formed with profit to its stockholders, it is the duty of its managing agents to wind up its affairs."

At the time of filing the petition it is common practice to move for appointment of a temporary receiver under the permissive provision of the statute, 3 C. L. 1915 (13566), and also to ask for an order restraining commencement of suit by creditors until the petition may be heard.

See, also the same sections in Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd, Ed.

§173. Notice of Intention to Dissolve.

26. The notice here mentioned may be given in the manner prescribed by the articles or by-laws. It need not be published in a newspaper, unless the articles or the by-laws so require. The word "published" is used in the sense of making the intent public to the stockholders. The notice may very properly embody the text of the resolution to dissolve.

§174. Two-thirds of the Capital Stock.

27. This expression is held to mean capital stock *outstanding*. The term capital stock, as applied to voting

power, is used to designate the shares of the capital stock in the hands of the stockholders. Marshall Corp., p. 514.

§175. Directors or Trustees to Make Audit.

28. A reasonable construction of this clause is, that the audit shall be made by, or under the supervision of, the committee of directors selected for that purpose. Star Line of Steamers v. Van Vliet, 43 Mich. 364, 366 (1880).

§176. The Trust Fund Doctrine.

29. The board as a body becomes a liquidating trustee for the benefit of the creditors and stockholders of the corporation under liquidation. This imposes a new duty rather than a new type of trust. Mason v. Pewabic Mining Co., 25 Fed. 882, 884 (1885).

The much criticized trust fund doctrine is an established principle of law in this state. "It is the established rule that the capital stock of a corporation constitutes a trust fund for the benefit of its creditors." Peninsular Savings Bank of Detroit v. Black Flag Stove Polish Co., 105 Mich. 535, 538 (1895). The corporation has no right to impair its capital by payment of dividends to the detriment of creditors. American Steel & Wire Co. v. Eddy, 130 Mich. 266, 267 (1902). The Supreme Court has said: "We are compelled to hold that the assessable stock and assets of a corporation constitute a trust fund, not only for the benefit of existing, but also for future creditors, ... and that the assets of a corporation cannot be used by it in the purchase of its outstanding stock to the exclusion" (i. e., detriment) "of subsequent creditors." Clark v. E. C. Clark Machine Co., 151 Mich. 416, 424 (1908). This doctrine does not, however, come into conflict with the principle that, "A corporation acting in good faith, without objection

from stockholders and without prejudice to creditors, may purchase shares of its own stock, regardless of the purpose for which it was organized, unless forbidden by statute." Cole v. Cole Realty Co., 169 Mich. 347, 350 (1912).

PART I, CHAPTER 4, SECTION 9

§177. Publication of Notice of Approaching Dissolution.

Publication of Notice.

It shall be the duty of such board to cause a public notice of such approaching dissolution to be inserted once each week for three successive weeks in some newspaper published in the city or village where such corporation has its principal place of business, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice. It shall also be the duty of such board to notify each known creditor by registered mail of such intention to dissolve.[30]

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 4, PART I

§178. Notice of Approaching Dissolution.

30. For form of notice, see §713. The same form may be used in giving notice by registered mail to creditors.

PART I, CHAPTER 4, SECTION 10

§179. Voluntary Dissolution—Powers of Board.

Claims.

The board shall have full power and authority

to settle, compromise and pay all claims against the corporation,[31] and to receive, receipt and give acquittance for all debts due the corporation, and to authorize the officers thereof to execute and deliver such deeds or instruments[32] as may be necessary in the sale or conveyance of any of the real or personal property of such corporation.

Pay All Claims.

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 4, PART I

§180. Power of Board to Settle, Compromise and Pay Claims.

31. Inasmuch as the board of directors continues to act as the board of a living corporation during dissolution under this statute, the power to settle, compromise and pay claims is not dependent upon this section (§179), but is a normal power of the board. Whitaker v. Grummond, 68 Mich. 249, 256 (1888); Northern Liberty Market Co. v. Kelly, 113 U. S. 199, 28 L. ed. 948, 949 (1885); First National Bank of Charlotte v. National Exchange Bank of Baltimore, 92 U. S. 122, 23 L. ed. 679 (1876); 3 Cook Corp. (7 ed.) §750, p. 2764 et seq.; 3 Fletcher Cyc. Corp. §1981, p. 3167.

§181. Execution of Deeds and Other Instruments.

32. In the absence of a provision in the articles or by-laws authorizing certain officers (as, for example, the president and secretary) to execute all deeds and other

corporate instruments, a resolution of like tenor should be adopted by the board and entered in the minutes.

PART I, CHAPTER 4, SECTION 11

§182. Accounting, Distribution and Deposit of Records.

Report to Stockholders.

As soon as may be convenient after the property has been sold, all assets reduced to cash and all debts paid, the directors shall call a final meeting of the stockholders or members of such corporation, and shall present at such meeting a detailed financial statement showing the exact surplus to be distributed among the stockholders or members. Such statement shall be subject to such audit as the stockholders or members present may direct, and such stockholders or members may then proceed to order the distribution of such surplus as the respective interests may appear.[33] It shall be the duty of the treasurer or other person having custody of the moneys of such corporation to make such distribution and to take charge of the records, receipts and accounts of such corporation and to have the same in safe-keeping; or upon the direction of such stockholders or members such records may be deposited for safe-keeping with any bank or trust company within this State. The books and records of such corporation shall not be destroyed by the custodian thereof within ten years next after the filing of notice of dissolution as hereinafter provided for. The expense of such custody shall be paid for in advance before the final distribution of the surplus is accomplished.[34]

Books and Records.

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 4, PART I

§183. Distribution to Stockholders.

33. After determination and payment of the company's debts, the net residue of the corporate property, reduced to cash, is to be distributed among the stockholders pro rata their paid-up stock. 5 Thomp. Corp. (2 ed.) §6585, p. 1378; Mason v. Pewabic Mining Co., 133 U. S. 50, 33 L. ed. 524, 531 (1890); in re S. P. Smith Lumber Co., 132 Fed. 618 (1904). Stockholders who have not paid in full for their stock generally should be required to do so, inasmuch as unpaid subscriptions are assets for the benefit of creditors. If, at the time of distribution, any stockholder has not paid in full for his stock, distribution to him is to be made proportionately to his investment. For example, if he has paid in 75% of the purchase price of his shares, he would be entitled to receive thereon three fourths as much as a stockholder holding a like number of fully paid shares. 5 Thomp. Corp. (2 ed.) §6588, p. 1382.

§184. Distribution to Executors and Administrators.

Shares are personal property. Upon decease of a stockholder they pass to his personal representatives, not to his heirs. 2 Woerner on Administration (2 ed.) §458; Billings v. Marshall Furnace Company, 210 Mich. 1, 9 A. L. R. 1239, 1242 (1920); Jones v. Green, 129 Mich. 203 (1901); 4 Thomp. Corp. (2 ed.) 3465, p. 84. It follows that, while the estate of a deceased stockholder is under administration, liquidation dividends are payable to his executors or administrators upon shares remaining in the decedent's estate.

§185. Liability of Directors upon Distribution.

The methods of liquidation and distribution under various statutes of the several states differ so materially, that

precedents relating to dissolution must be applied with caution, or they may be misleading. It is to be remembered that the scheme of dissolution provided by the present act contemplates the survival of the corporation during the entire procedure. This differs from the scheme presented by the Judicature Act, under which judicial and absolute dissolution precedes liquidation. It differs, too, from the large class of statutes which provide that the directors shall become liquidating trustees, and where, as such trustees, they may protect themselves by application to a court of equity for guidance, or, failing so to do, act at peril. American Ice Co. v. Pocono Spring Water Ice Co., 165 Fed. 714, 717 (1908).

Under the present act, the corporation persists during liquidation and the board of directors continues to manage all of its affairs. The only change is in the corporate purpose. Its former purposes are superseded by the single object of complete and orderly retirement from the field. The directors remain fiduciaries, but nothing more. Boyd v. Mutual Fire Association of Eau Claire, 116 Wis. 918 (1902). They are not trustees in the ordinary sense in which that term is used. 2 Machen Corp. §1532, p. 1273; 7 R. C. L. §441, p. 456. Their liabilities, however, are governed by the rules of law applicable to trustees acting under an implied trust. 2 Thomp. Corp. §1215, 163; Bosworth v. Allen, 168 N. Y. 157, 55 L. R. A. 751, 775 (1901) and notes. Thus, if the directors secure a secret profit for themselves through sale of the corporate property, the secret profit will be treated in equity as an asset of the corporation. Garber v. Town, 208 Mich. 1, 9 (1919); Bollstrom v. Duplex Power Car Company, 208 Mich. 15, 29 (1919); Walsh v. Goulden, 130 Mich. 531, 539 (1902); Smith v. Smith, Sturgeon & Co., 125 Mich. 234 (1900). The same rule is applied to promotors American Forging & Socket Co. v. Wiley, 206 Mich. 664 (1919).

Pursuant to the present statute, the corporation, by its board, liquidates itself. The act of distribution is the act of the corporation, if performed by the directors with reasonable care, in good faith, and within the scope of their lawful authority. Under such circumstances, after payment of the debts of the company, the directors will not be individually liable for errors in making distribution to persons mistakenly believed to be entitled thereto, whose right as stockholders, or as members, appears by the corporate records. 8 Fletcher Cyc. Corp. §5648, pp. 9232, 9233; 5 Thomp. Corp. §6605, pp. 1397, 1398.

Assets prematurely paid to stockholders may be reached by creditors. American Steel & Wire Co. v. Eddy, 138 Mich. 403, 408; Id. 130 Mich. 266, 268 (1902); Brewer v. Michigan Salt Association, 58 Mich. 351, 355 (1885); Lockhart v. Van Alstyne, 31 Mich. 75 (1875).

§186. Preservation of Books and Records.

34. This provision is new. The books may be deposited with any bank or trust company within the state, or, upon payment of a fee of $10, may be deposited with the Secretary of State. See §675.

Part I, Chapter 4, Section 12

§187. Voluntary Dissolution—Final Acts.

Filing Report.

It shall be the duty of the president and secretary of such corporation to execute and file with the Secretary of State a certificate reciting the resolution to dissolve, a copy of the final statement, and the sworn statement of the treasurer of such corporation that all of the debts of such corporation have been paid and the surplus distributed to the stockholders and mem-

Name of Custodian.

bers, and giving the name and address of the custodian of the records of such corporation. The Secretary of State shall have access to all of such corporation's records, wherever lodged, at any time within ten years next after such dissolution, and any person or corporation having custody of such records, who refuses to produce the same on demand of such Secretary of State, shall be deemed guilty of a misdemeanor; and such Secretary of State may enforce his right to have access to such books by the subpoena or warrant of any court of record in this state.[35]

COMMENTARIES ON THE TWELFTH SECTION OF CHAPTER 4, PART I

§188. Process to Compel Production.

35. The secretary of state having been given by law the right of access, he may avail himself of any appropriate process by which that right may be enforced. The methods indicated by the statute for requiring production are no doubt cumulative with other remedies. It is doubted that the statute [3 C. L. 1915, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed. (13554), et seq.] providing that delivery of books and papers may be obtained by warrant is applicable for the benefit of the secretary of state. But subpœna *duces tecum* may be used. Ashley v. Calhoun Circuit Judge, 138 Mich. 44, 46 (1904); 2 Abbott Cyc. Mich. Prae. (2 ed.), p. 1698. And it would seem that mandamus is also available. Coldwater Copper Mining Co. v. Gillis, 170 Mich. 126; Leach v. Davy, 199 Mich. 378, 383 (1917); Eldred v. Elliott, 161 Mich. 262 (1910).

PART I, CHAPTER 4, SECTION 13

§189. Rights of Creditors After Dissolution.

When Deemed Renewal

Upon filing such final certificate, the said corporation shall be deemed to be dissolved, its franchise surrendered, and all of its powers, rights and privileges extinguished: *Provided, however,* That nothing in this subdivision contained shall be construed as taking away or prejudicing any right of creditors to pursue any remedy at law or in chancery given by any law of this state with respect to such corporation, its stockholders or members, within such period as may be prescribed in the statutes of limitations.[36]

COMMENTARIES ON THE THIRTEENTH SECTION OF CHAPTER 4, PART I

§190. Remedies After Dissolution.

36. If some essential step—for example the required vote of the stockholders—has been omitted, dissolution will not ensue, and the corporation may remain in the same situation as though that step had not been attempted. The method prescribed by the statute must be substantially followed. 8 Fletcher Cyc. Corp. §5463, p. 9079.

The statute itself preserves all rights of creditors until such rights are cut off by the statute of limitations.

If the remedy against the corporation has been made ineffective by distribution of its assets to the stockholders, or members, and dissolution, the provisions of Chapter 3, Part II, (§189) will afford the unpaid creditor an action against stockholders and directors. Irrespective of this,

equity may follow the assets as a trust fund. Peninsular Savings Bank v. Black Flag Stove Polish Co., 105 Mich. 535, 538 (1895); American Steel & Wire Co. v. Eddy, 130 Mich. 266, 267 (1902); Clark v. E. C. Clark Machine Co., 151 Mich. 416, 424 (1908).

PART II

CORPORATE MANAGEMENT, POWERS, FINANCES, ETC.

CHAPTER 1

CORPORATE POWERS AND MANAGEMENT

(References are to annotator's sections)

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PART II, CHAPTER 1, SECTION 1

§191. Corporate Powers.

Powers.

Every corporation shall have power to have succession; to sue and be sued in any court of law or equity, or to be a party to any necessary proceeding before any board or commission of this or any other state or government, with the

Amendment to the Statute

§191. Corporate Powers.

SECTION 1. Every corporation shall have power to have succession; to sue and to be sued in any court of law or equity, or to be a party to any necessary proceedings before any board or commission of this or any other State or government, with the same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same; to elect all necessary officers and to appoint and employ such agents and employes as the business may require, and to fix the compensation in all cases.[1] Every corporation shall possess and may exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted thereto;[2] *but no corporation shall interpose the defense of usury to any cause of action hereafter arising.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 235, effective September 5, '27.

same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same; to elect all necessary officers and to appoint and employ such agents and employes as the business may require, and to fix the compensation in all cases.[1] Every corporation shall possess and may exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted thereto.[2] Natural Person.

For corresponding provision of Act 232 of 1903, see Appendix B (9029) (9030) and (9049).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART II

§192. General Powers.

1. The general powers herein enumerated do not differ materially from those deemed inherent in corporations in the days of Sir William Blackstone. 1 Black. Comm. p. 381. Substantially the same general powers have been enumerated in the statutes of this state since 1846. Revised Statutes 1846, p. 211; 2 C. L. 1857 (2143); 1 C. L. 1871 (3428); 1 H. S. §4860; 3 C. L. 1897 (8527); 3 C. L. 1915 (11328). Fundamentally, all powers enjoyed by a corporation are derived from the creative sovereignty. 7 R. C. L. §512, p. 526.

§193. Incidental Powers.

2. This act differs from ordinary legislation of its class, inasmuch as the right to exercise incidental powers is expressly conferred, and is not left to implication. However, the result is the same. A corporation may always perform

such unforbidden acts as are allied with, and incidental to, the lawful objects of its creation. Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 373 (1910). Or, as stated by Mr. Brice: "Corporations may transact all such matters as, being auxiliary to their primary business, are transacted by ordinary individuals under similar circumstances." Brice, Ultra Vires, §66, cited with approval in Eureka Iron & Steel Works, v. Bresnahan, 60 Mich. 332, 338 (1886).

"The implied powers of a corporation are not limited to such as are indispensibly necessary to carry into effect those expressly granted, but comprise all that are necessary, in the sense of being appropriate, convenient and suitable, for such purposes, including the right of a reasonable choice of means to be employed." 10 Cyc. p. 1097; Duluth, South Shore & Atlantic Railway Co. v. Wilson, 200 Mich. 313, 322 (1918).

"An incidental power may be defined to be one that is directly and immediately appropriate to the specific power granted, and not one that has merely some slight or remote relation to it." 7 R. C. L. §513, p. 528; Bank of Michigan v. Niles, 1 Doug. 401, 403 (1844).

§194. Acts Ultra Vires.

It is an established principle that, "The plea of *ultra vires* should not, as a general rule, prevail, whether interposed for or against the corporation, when it will not advance justice, but, on the contrary, would accomplish a legal wrong." Carson City Savings Bank v. Carson City Elevator Co., 90 Mich. 550, 554 (1892). The corporation cannot retain benefits and deny its authority to acquire them. Coit v. City of Grand Rapids, 115 Mich. 493, 498 (1898); Rehberg v. Tontine Surety Co., 131 Mich. 135, 137 (1902); Citizens' Savings Bank v. Globe Brass Works, 155 Mich. 3, 9 (1908); Dewey v. Toledo, Ann Arbor &

North Michigan R. Co., 91 Mich. 351, 363 (1892); Day v. Spiral Spring Buggy Co., 57 Mich. 146, 152 (1885); Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 374 (1910). "The executed dealings of corporations must be allowed to stand for and against both the parties, where the plainest rules of good faith so require." Hathaway v. Vaughn, 162 Mich. 269, 274 (1910).

Restated, the rule sustained by "the great mass of judicial authority seems to be to the effect that, where a private corporation has entered into a contract in excess of its granted powers, and has received the fruits or benefits of the contract, and an action is brought against it to enforce the obligation on its part, it is estopped from setting up the defense that it had no power to make it." Stone-Ordean-Wells Co. v. New England Pie Co., 201 Mich. 407, 417 (1918).

The doctrine of *ultra vires* is inapplicable to corporate contracts not prohibited, either expressly or by necessary implication, in the statute. Ely v. Oakland Circuit Judge, 162 Mich. 466, 471 (1910). But where a contract is neither inequitable, immoral, nor of itself illegal, but is nevertheless uninforcible because *ultra vires,* equitable rules "require the parties to be placed, as nearly as may be, in statu quo." Assumpsit being an "essentially equitable action," it may be employed as a means for recovery of money equitably recoverable. Hoyt v. Paw Paw Grape Juice Co., 158 Mich. 619, 626 (1909); Tucker v. Mowrey, 12 Mich. 387 (1864).

Where a power has been vested in the stockholders by statute or by-law, the stockholders alone have the right to complain of its unsurpation by the board of directors; and the right of challenge may be lost through unnecessary delay. West Michigan Park Association v. Pere Marquette R. Co., 172 Mich. 179, 189 (1912).

§195. Restraint of Ultra Vires Act.

A single stockholder, acting promptly, may cause an *ultra vires* act to be restrained, and it is said to be immaterial that the act complained of would be beneficial to him or to the corporation. Pollitz v. Michigan Railroad Commission, 205 Mich. 549, 553 (1919); Fletcher & Sons v. Alpena Circuit Judge, 136 Mich. 511, 513 (1904).

§196. Defense of Ultra Vires Must be Specially Pleaded.

The claim that an act or contract is *ultra vires* is an affirmative defense and must be specially pleaded. It is not available under the general issue without notice. Blackwood v. Lansing Chamber of Commerce, 178 Mich. 321, 323; Citizens' Savings Bank v. Globe Brass Works, 155 Mich. 3 (1908); Niles v. Benton-Harbor-St. Joe Railway & Light Co., 154 Mich. 378, 382 (1908); Wachsmith v. Merchants National Bank, 96 Mich. 426, 430 (1893); Circuit Court Rule No. 23.

PART II, CHAPTER 1, SECTION 2

§197. Issue of Stock for Property.

Property.

Every corporation shall have power, unless expressly prohibited by law, to purchase, hold and convey all such real and personal estate as the purposes of the corporation may require, and all other real and personal estate which shall have been, bona fide, conveyed or mortgaged to said corporation by way of security or in satisfaction of debts. Any stock corporation may issue its authorized capital stock in payment for

Stock for Property.

any real estate or personal property[3] so purchased, to the amount of the value thereof, and

Amendment to the Statute

§197. Issue of Stock for Property.

SECTION 2. Every corporation shall have power, unless expressly prohibited by law, to purchase, hold and convey all such real and personal estate as the purposes of the corporation may require, and all other real and personal estate which shall have been, bona fide, conveyed or mortgaged to said corporation by way of security or in satisfaction of debts. *Any corporation organized for the purpose of constructing, owning or operating any highway bridge or tunnel, across or under any river, stream or other waterway forming a part of the boundary between this State and any other state or country, shall in addition to all other powers by this act conferred, have the power to condemn any and all real estate, or interest therein, or pertaining thereto deemed necessary for the purposes of such corporation, when no mutual agreement can be reached for the purchase thereof, and in which condemnation said corporation shall proceed as in the condemnation of lands or franchises for railroad purposes under chapter one hundred fifty-seven of the Compiled Laws of nineteen hundred fifteen, as amended. All such corporations shall have full power and authority to enter into any and all contracts with any person, firm or corporation in this or any other state or country which may be necessary for the carrying out of the purposes for which said corporation shall have been organized.* Any stock corporation may issue its authorized capital stock in payment for any real estate or personal property [3] so purchased, to the amount of the value thereof, and the capital stock so issued shall be deemed full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment except the liability imposed by section ten and chapter three of part two hereof; [4] and in the absence of actual fraud in the transaction the judgment of the directors of the corporation as to the value of the property shall be conclusive. [5] Within ten days after any corporation shall issue any of its capital stock in payment for property it shall file a sworn schedule of such property with the Secretary of State similar to that required by section two of the next succeeding chapter hereof: [6] *Provided, however,* That any corporation may issue part-paid stock in payment of property conveyed

to it, in which case the articles, and any certificate or statement required by this act to be filed with the Secretary of State with reference to the value of the property so conveyed, shall clearly state the number of shares so issued and the amounts credited upon such shares as partial payments thereon, in addition to the other statements with respect to such property's cash value; and such shares, so issued, shall be subject to such further call for the balance due thereon, as may become necessary to the corporation or to its creditors as in other cases. [7]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 232, effective August 27, '25, by P. A. '27, Act No. 335, effective September 5, '27.

Full-Paid Stock.

the capital stock so issued shall be deemed full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment except the liability imposed by section ten of chapter three or part two hereof;[4] and in the absence of actual fraud in the transaction the judgment of the directors of the corporation as to the value of the property shall be conclusive.[5] Within ten days after any corporation shall issue any of its capital stock in payment for property it shall file a sworn schedule of such property with the Secretary of State similar to that required by section two of the next succeeding chapter hereof:[6] *Provided, however,* That any corporation may issue part-paid stock in payment of property conveyed to it, in which case the articles, and any certificate or statement required by this act to be filed with the Secretary of State with reference to the value of the property so conveyed, shall clearly state the number of shares so issued and the amounts credited upon such shares as partial payments thereon, in addition to the other statements with respect to such property's cash value; and such shares, so issued, shall be subject to such further call for the balance due thereon as may become necessary to the corporation or to its creditors as in other cases.[7]

Report of Issue.

Part Paid Stock.

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 1, PART II

§198. Payment for Stock in Property.

3. Until 1907, good will and other intangible property was available for use in payment for stock. Williams v.

Farrand, 88 Mich. 473, 477 (1891); Smith v. Walker, 57 Mich. 456 (1885); O. & W. Thum Co. v. Tloczynski, 114 Mich. 149, 158 (1897); Grand Rapids Wood Finishing Co. v. Hatt, 152 Mich. 132, 137 (1908); Durand v. Brown, 236 Fed. 609, 614 (1916). Act 146 of 1907, 2 C. L. 1915 (9018) p. 3273, amended by Act 232 of 1903, by requiring, "that only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process." Under this amendment good will and unpatented inventions were deemed excluded from the classes of property in which stock might be paid-up. Report of Attorney General (Fellows), 1914, p. 100; Id. (Kuhn) 1912, pp. 61, 62. The provision above quoted is embodied in the present act. (§277.) But see Brown v. Weeks, 195 Mich. 27 (1917).

§199. Liability of Stockholders for Labor Debts.

4. There is no "section 10 of chapter 3 of part 2." Undoubtedly the reference is to section 9 of that chapter. (§296.) The error is immaterial. The liability of stockholders for labor debts is created by the state constitution (Mich. Const. 1908, Art. XII, §4) and would exist, even though the statute in terms sought to grant stockholders immunity from it. The statute is subordinate to the consitution, and that which is subordinate must yield to that which is supreme. For further comment as to labor debts see §§350, 351.

§200. Meaning of Actual Fraud.

5. Fraud is either actual or constructive.

Actual fraud involves the element of bad faith and intentional deception. (12 R. C. L. §3, p. 230.) "Actual

or positive fraud has been said to consist in circumventing, cheating or deceiving a person to his injury, by any cunning, deception or artifice." 20 Cyc. 8.

Constructive fraud is such as arises from the situation of the parties and the relations in which they are placed. Unlike actual fraud, it may arise without fraudulent intent. 12 R. C. L. §3, p. 230.

"Actual or positive fraud consists in deception, intentionally practiced to induce another to part with property or to surrender some legal right, and which accomplishes the end designed." Cooley on Torts, p. 474. In the absence of this class of fraud, the judgment of the directors is made conclusive. (§197.)

But it is not too much to require that judgment shall in fact be exercised, and that it shall be exercised in good faith. As observed by Mr. Justice Ostrander: "It will not do to say that the entire capital stock of such an association can be made fully paid and non-assessable by the mere observance of a form—by force of a declaration of the three original associates—the plan in fact being to sell the stock, for the association, for cash, for a fraction of its par value, in order to supply cash capital for the said company to enable it to carry on its operations." Wood v. Sloman, 150 Mich. 177, 193 (1907); Nichols v. Buell, 157 Mich. 609, 613 (1909).

A leading case, decided in the United States Circuit Court of Appeals by Circuit Judges Knappen and Denison, and District Judge Sessions, is instructive as forecasting the interpretation of the valuation clause of the present act. In that case the statute (Act 232 of 1903, §2) was found to contain a provision as follows: "Where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each

item is taken, *which valuation shall be conclusive in the absence of fraud.*" The valuation clause in Act 84 of 1921 originated in this provision of Act 232 of 1903. Of the latter the federal court said: "It is the settled rule in Michigan that stock issued as paid-up and non-assessable cannot be assessed in the absence of fraud. (Citing Young v. Erie Iron Co., 65 Mich. 111 (1887); Graves v. Brooks, 117 Mich. 424, 426 (1898) . . . . It is of course true that a purely fictitious item of property would not satisfy the statute, as, for example, the formula involved in Wood v. Sloman, 150 Mich. 177, 193, 194, 114 N. W. 317, whose valuation was held merely a form to enable a sale of stock for a fraction of its proper value, or the gift of influence involved in Savings Bank v. Stove Polish Co. (105 Mich. 535), or the fictitious schedule condemned in Nichols v. Buell, 157 Mich. 609, 615; 122 N. W. 217." Durand v. Brown, 236 Fed. 609, 613, 614 (1916).

So also, in a Michigan case heard in the United States Circuit Court of Appeals before Circuit Judges Taft and Lurton and District Judge Hammond, it was held that: "When full-paid stock is issued by a corporation having power to receive property in payment for stock subscriptions, there must be *actual* fraud in the transaction to authorize creditors of the corporation to call upon the subscriber for the difference between the actual value and that at which it was received." Rickerson Roller-Mill Co. v. Farrell Foundry & Machine Co., 75 Fed. 554, 558 (1896); cited with approval in Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co., 166 Mich. 618, 629 (1911).

If these cases correctly announce the law, then the present act merely restates the preexisting law upon the subject of valuations. It is safe to assume that this is true—that the new act has introduced no novel principle of valuation—and hence the decisive and interpretive value of prior decisions

is unimpaired. From these decisions certain principles may be formulated:

(a) A valuation without good faith exercise of judgment by the directors is not conclusive.

For a case where "the incorporators exercised no judgment whatever upon the value" of property taken for stock, see McBryan v. Universal Elevator Co., 130 Mich. 111, 118 (1902). See also Dieterle v. Ann Arbor Paint & Enamel Co., 143 Mich. 416, 422 (1906); Moore v. Universal Elevator Co., 122 Mich. 48 (1899). In the latter opinion (p. 61) the "Money or money's worth" rule is mentioned. This rule has never been the law in this state. Young v. Erie Iron Co., 65 Mich. 111, 122 (1887); Graves v. Brooks, 117 Mich. 424.

(b) A valuation in good faith, reached by a fair exercise of the judgment of the directors, is conclusive, no matter how excessive it may subsequently prove to have been.

Young v. Erie Iron Co., Id.; Graves v. Brooks, Id.; 1 Machen Corp. §785, pp. 633, 634, 635.

(c) Stockholders and creditors who become such with full knowledge of the transaction, or who have participated therein, will not be heard to complain of an overvaluation. Courtney v. Youngs, 202 Mich. 384, 395 (1918); Ten Eyck v. Pontiac, Oxford & Port Austin R. Co., 114 Mich. 494, 500 (1897).

§201. Supplemental Schedule.

6. It has been a common practice to pay up stock in cash, and then to use the cash in purchasing such property as the corporation may desire to acquire. Obviously, when this is done no supplemental schedule as to such property need be filed. (§§197, 277.)

Where a supplemental schedule is necessary, the duty to file it is imposed upon the corporation itself. Uninten-

tional neglect to file the schedule will not cast individual liability upon the directors. (§335.) Deloria v. Van Winkle, 162 Mich. 660, 662 (1910). But they may be liable if they order or assent to the omission. (§335.)

§202. Stock Part-Paid in Property.

7. This provision is intended to place persons who pay up stock in property upon the same basis as those who pay in cash. They may pay with property, as far as the property will reach, upon a plane of equality with cash subscribers, and the unpaid portion of their subscriptions, like those of the cash subscribers, may remain subject to call, with the possibility that the call may not become necessary.

PART II, CHAPTER 1, SECTION 3

§203. Board of Directors.

Powers.

The stock, property and business affairs of every corporation shall be managed by not less than three dirctors,[8] who shall be chosen by the stockholders or members, excepting in the case of trustee corporations where such trustees shall have been named in the trust instrument in which case the trustees named in such instrument shall be the trustees of such corporation and shall have such specific powers as shall have been granted in such instrument in addition to the general powers, duties and responsibilities prescribed in this act;[9] and such elections shall be held and conducted at such time and place and in such manner as shall be provided by the by-laws of said corporation made pursuant to the provisions of this act.[10] All such directors shall be stockholders or members of said corporations and shall have such further qualifications as may be prescribed by law or by the

Qualifications.

articles or the by-laws of such corporations.[11] The directors, excepting in such particular cases as are hereinafter provided for, shall hold office for one year, and until their successors shall be chosen in their stead.[12] The directors of any corporation may require bonds of such of its officers or employes and in such amount as may be fixed and determined by such board.[13]

Directors' Term of Office.

For corresponding provision of Act 232 of 1903, see Appendix B (9020).

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 1, PART II

§204. Management by Board of Directors.

8. To bind the corporation, the directors must act as a body. In the absence of some specially delegated power, a director, acting alone, has no greater authority than any other stockholder or member. "The directors when convened as a board can act, and not otherwise." Kamm & Schillinger Brewing Co. v. St. Joseph County Village Fire Ins. Co., 168 Mich. 606, 622 (1912). "Individual directors have no power whatever to bind a corporation." Lockwood v. Thunder Bay River Boom Co., 42 Mich. 536, 539 (1880); Hartford Iron Mining Co. v. Cambria Mining Co., 80 Mich. 491, 495 (1890); Allington & Curtis Mfg. Co. v. Detroit Reduction Co., 133 Mich. 427, 435 (1903).

The term "directors," as used in the act generally, should be construed to mean the directors acting collectively at a properly convened meeting of the board of directors. Cahill v. Kalamazoo Mutual Insurance Co., 2 Doug. (Mich.) 123, 136 (1845); Finley Shoe & Leather Co., v. Kurtz, 34 Mich. 89, 91 (1876); Bond v. Pontiac, Oxford & Port Austin R. Co., 62 Mich. 643, 651 (1886); Peek v. Detroit

Novelty Works, 29 Mich. 313 (1874); Rice v. Peninsular Club of Grand Rapids, 52 Mich. 87, 90 (1883); Weed v. Construction News Co., 160 Mich. 644; Pierson & Hough Co. v. Noret, 154 Mich. 267 (1908); Lawrence v. Washington-Detroit Theatre Co., 190 Mich. 44, 53 (1916); Chase v. Michigan Telephone Co., 121 Mich. 631, 634 (1899); Robinson v. Taber, 198 Mich. 767, 772 (1917); Dickinson Island Land Co. v. Hill, 210 Mich. 53, 57 (1920). See §228.

In the light of the authorities holding that the directors must act as a collective body, and not individually, the use of the term "directors" in its collective sense in this act is obvious, for many of the acts which the "directors" are empowered to perform are clearly such as could not be performed by individual directors: for example,

(a) Filling vacancies upon the board; (§236)

(b) Calling in subscriptions; (§314)

(c) Adopting by-laws; and (§219)

(d) Declaring dividends; (§331).

The language of the act placing the "stock, property and business affairs" of the corporation under control of the board of directors is substantially the same as appeared in section 4 of Act 232 of 1903. Under the last mentioned act, it was attempted, in one instance, to provide in the articles that the corporation should not, without consent in writing of two-thirds of its capital stock (a) grant licenses under a patent, (b) mortgage or pledge its assets, or (c) incur indebtedness exceeding $2500. The attorney general ruled that such restrictions were incompatible with the *complete* powers of management vested in the board of directors by the statute. Report of Attorney General (Bird), 1909, p. 139. See also Laird v. Michigan Lubricator Co., 153 Mich. 52 (1908); McBroom v. Cheboygan Brewing & Malting Co., 162 Mich. 323, 329 (1910).

§205. General Powers of Board of Directors.

Inasmuch as the complete power of management is vested in the board, it follows that the board in exercise of its powers, may transact all business of the corporation within the limitations of its charter as completely as an individual may transact his private business, except as to matters reserved by the statute to the stockholders, 2 Thomp. Corp. (2 ed.) §1178, p. 115.

The board of directors may:

(a) Make all legitimate corporate contracts; (Marshall Corp., p. 936; 3 Cook Corp. [7 ed.] §714, 2468.)

(b) Compromise claims in favor of, or against, the corporation; (3 Fletcher Cyc. Corp. §1981, p. 3167; Whitaker v. Grummond, 68 Mich. 249, 256 [1888].)

(c) Make calls upon subscriptions; (3 Fletcher Cyc. Corp. §1986, p. 3170.)

(d) Authorize suits and prosecute appeals; (Eagle Iron Co. v. Colyar, 156 Fed. 954 [1907]; 3 Thomp. Corp. [2 ed.] §3116, p. 1066.)

(e) Sell stock of the corporation; (3 Fletcher Cyc. Corp. §1976, p. 3165.)

(f) Make an assignment for the benefit of creditors; (Boynton v. Roe, 114 Mich. 401, 407 [1897]; Covert v. Rogers, 38 Mich. 363 [1878]; Richardson v. Rogers, 45 Mich. 591 [1881], or put the company into voluntary bankruptcy. In re Kenwood Ice Co., 189 Fed. 525 [1911].)

(g) Declare or pass dividends; (Dodge v. Ford Motor Co., 204 Mich. 459, 499, 500, 501, 502 [1919]; Hunter v. Roberts, Throp & Co., 83 Mich. 63, 71 [1890]; Lockhart v. Van Alstyne, 31 Mich. 75, 79 [1875].)

(h) Fix salaries and agree upon payment of bonuses; (3 Fletcher Cyc. Corp. §1966, p. 3160; Seymour v. Detroit Copper & Brass Rolling Mills, 56 Mich. 117 [1885];

Kalamazoo Novelty Mfg. Works v. Macalister, 40 Mich. 85 [1879]; Sorenson v. Charlevoix Rock Product Co., 191 Mich. 86 [1916]), *but not in an amount that "would tend to impair the company's business."* (§335.)

(i) Borrow money; (2 Thomp. Corp. [2 ed.] §1190, p. 135; Bank Commissioners v. Bank of Best, Harrington Chan. [Mich.] 106, 111 [1842]; 3 Fletcher Cyc. Corp. §1968, p. 3161), *but not to give mortgages other than for purchase money,* unless expressly authorized in the articles. (§316.)

(j) Sell property in ordinary course of business; (3 Fletcher Cyc. Corp. §1971, p. 3162), *but not the entire assets without authority from the stockholders* (§316); see also Thomas v. Mills, 159 Mich. 402, 408, 409; German Corporation v. Negaunee German Aid Society, 172 Mich. 650, 656 [1912]); *unless the corporation is insolvent.* (Knight v. Michigan Female Seminary, 152 Mich. 616 [1908]; Young v. Toledo & South Haven R. Co., 76 Mich. 485, 496 [1889]).

(k) Adopt and enforce by-laws, unless restricted by the articles. (§219.)

§206. Trustees in Trustee Corporations.

9. As has been stated, the provisions of the act relating to trustee corporations are new and original. Questions arising upon this subject will be solved necessarily upon principle. Clearly, the trustees may exercise such corporate powers as are compatible with execution of their trust, and none other. (§451.)

§207. Time, Place and Manner of Holding Elections.

10. If the by-laws clearly specify the time and place at which annual meetings are to be held, no further notice

thereof is necessary. 1 Thomp. Corp. (2 ed.) §817, p. 1003; 2 Cook Corp. (7 ed.) §594, p. 1746. The present act does not require the giving of notice of an annual meeting under such circumstances. (§257.)

The "manner" of holding annual meetings cannot be wholly regulated by by-law. Cumulative voting upon the election of directors is permitted, and "the entire number of directors shall be balloted for at one and the same time, and not separately." (§240.) A by-law providing otherwise would be void. Samberg v. Knights of the Modern Maccabees, 158 Mich. 568, 571 (1909); Pulford v. Fire Department of the City of Detroit, 31 Mich. 457, 465 (1875); Stewart v. Young Men's Father Matthew etc. Society, 41 Mich. 67, 74 (1879).

It is considered good practice to give notice of the annual meeting, even where neither laws nor by-laws require it. But a requirement in the by-laws that notice shall be given, when not legally necessary, is sometimes an invitation to trouble.

For form of by-laws, see §§721, 722.

§208. Directors Must Be Stockholders.

11. The directors of a stock corporation organized under this act, must be stockholders. If any director, at any time during the term for which he was elected, or in which he holds over, ceases to be a stockholder, he ceases, *ipso facto,* to be a director. 2 Cook Corp. (7 ed.) §623, p. 1895. (§203.)

§209. Who Are Stockholders?

A stockholder, as the term implies, is "one owning shares of stock." Continental Securities Co. v. Interborough Rapid Transit Co., 165 Fed. 945, 963 (1908). But a stock certificate is not stock; it is merely *prima facie* evidence of

title to stock. Union City Lumber Co., 170 Mich. 205, 225 (1912). One may hold a stock certificate issued in his name, or transferred to him, without being actually a stockholder. Strong v. Chaney, 182 Mich. 37 (1914); Osborn v. Detroit Kraut Co., 193 Mich. 664, 672 (1916); Flint v. Le Heup, 199 Mich. 41, 49 (1917). And one may be a stockholder without holding a stock certificate. May v. McQuillan, 129 Mich. 392, 396 (1902).

While it may be provided by the articles, or by-laws, that the stockholder of record shall have the "exclusive right . . . . as the owner of shares to receive dividends, and to vote as such owner," [Uniform Stock Transfer Act, 3 C. L. 1915, Chap. 229, (11920) et seq. p. 4229, Act 106 of 1913] the right to vote upon shares is not a final test of the right to hold office. 2 Cook Corp. (7 ed.) §623, pp. 1890, 1891 (notes). One may be excluded from voting by reason of a by-law denying that privilege to unregistered stockholders, and may, nevertheless, if no by-law forbids, be qualified as a stockholder for the purpose of holding office. Noller v. Wright, 138 Mich. 416 (1904); McLean v. Charles Wright Medicine Co., 96 Mich. 479, 482 (1893); Walker v. Detroit Transit R. Co., 47 Mich. 338, 347 (1882); Daggett v. Davis, 53 Mich. 35 (1884); Mandlebaum v. North American Mining Co., 4 Mich. 464, 473 (1857). On the other hand, one who is entitled to vote as a stockholder is qualified to hold any office in the corporation to which any stockholder is eligible. Cook Corp. ante.

§210. Executors and Administrators.

These are stockholders and are therefore eligible to election as directors. Billings v. Marshall Furnace Co., 210 Mich. 1, 5, 9 A. L. R. 1239, 1242 (1920); Jones v. Green, 129 Mich 203 (1901).

§211. Trustees.

Those who hold legal title to, but no beneficial interest in, stock are eligible to election as directors. It is sufficient that they are the registered holders of the shares. 3 Fletcher Cyc. Corp. §1772, p. 2975.

§212. Holders of Stock Acquired After Election.

Holders of stock acquired after election, but before entering upon their duties as directors, have been held eligible under a similar statute. "The law is satisfied if both election and ownership precede action as a director." Greenough v. Alabama Great Southern R. Co., 64 Fed. 22, 24 (1894); 2 Cook Corp. (7 ed.) §623, p. 1894.

§213. Pledgees.

Those who appear upon the books of the corporation as registered stockholders are eligible to election as directors. 2 Cook Corp. (7 ed.) 623, p. 1889. But one who holds stock as collateral without having caused its transfer and reissue upon the books of the company is ineligible, for he is not a stockholder. Osborn v. Detroit Kraut Co., 193 Mich. 664, 672 (1916); 6 Fletcher Cyc. Corp. §3920, p. 6667.

§214. Holders of Qualifying Shares.

Holders of qualifying shares transferred to them for the express purpose of qualifying them as directors are eligible. 3 Fletcher Cyc. Corp. §1772, p. 2975; 2 Cook Corp. (7 ed.) §623, p. 1889.

§215. Directors Holding Over.

12. Directors holding over for want of election of suc-

cessors possess the same rights and powers that were incident to the office during the term for which they were originally elected. They remain *de jure* directors. Preston National Bank of Detroit v. George T. Smith Middlings Purifier Co., 84 Mich. 364, 378 (1890); Simms v. Bialy Hardware & Supply Co., 187 Mich. 375, 383 (1915); Cahill v. Kalamazoo Mutual Ins. Co., 2 Doug. (Mich.) 123, 139 (1845); Kent County Agricultural Society v. Houseman, 81 Mich. 609, 613 (1890); Chamberlin v. Detroit Stove Works, 103 Mich. 124 (1894); Kimball v. Goodburn, 32 Mich. 10 (1875). (§203.)

§216. Bonds of Officers.

13. For form of treasurer's bond see §716.

Part II, Chapter 1, Section 4

§217. Election at Special Meeting.

Special Elections.

If an election of directors or trustees in any corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time to be fixed upon, notice whereof to be given by the directors: *Provided*, That in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors or trustees by giving the notice prescribed in section twelve of this chapter.[14]

For corresponding provision of Act 232 of 1903, see Appendix B (9021).

Amendment to the Statute

§219. Officers, Agents and Directors' By-Laws.

SECTION 5. Unless otherwise prescribed in the articles, the directors shall elect one of their number to be president or chairman of the corporation and board, [5] and one or more of their number to be vice-president [16] or vice-chairman, and shall also choose a secretary [17] and a treasurer, [18] and assistants if deemed necessary. [19] The secretary and treasurer shall reside at *one of the places* where the corporation transacts its business within this State unless the articles provide for the location of the principal office without this State. The directors shall appoint such other officers and agents as the articles or the by-laws of the corporation shall prescribe. If the stockholders so direct, the same person may hold any two offices excepting those of president and vice-president.[20] Unless otherwise prescribed in the articles the directors shall have authority to enact and enforce the by-laws of the corporation, [21] and such directors, if more than five in number, may appoint an executive committee of such board [22] to have the active management of the business affairs of such corporation in the interim between full board meetings, subject to such restrictions and limitations as the board may impose upon such executive committee.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 1, PART II

§218. Special Meeting for Election Purposes.

14. This provision, slightly changed, was taken from Act 232 of 1903, 3 C. L. 1915 (9021). By empowering any three stockholders to call the meeting, the necessity of resort to mandamus or (in case of fraud) to equity, to require the calling of a meeting is made remote. The remedies, however, are available if needed. Marshall Corp. 897. It will be noted that special meetings for election purposes are to be called in the manner prescribed by the by-laws for calling special meetings, and that "at least three days notice" (or such longer notice as the by-laws may provide) must be given. (§257.)

PART II, CHAPTER 1, SECTION 5

§219. Officers, Agents and Directors' By-laws.

Officers.

Unless otherwise prescribed in the articles, the directors shall elect one of their number to be president or chairman of the corporation and board,[15] and one or more of their number to be vice-president [16] or vice-chairman, and shall also choose a secretary [17] and a treasurer,[18] and assistants if deemed necessary.[19] The secretary and treasurer shall reside at the place where the corporation transacts its business within this state, unless the articles provide for the location of the principal office without this state. The directors shall appoint such other officers and agents as the articles or the by-laws of the corporation shall prescribe. If the stockholders so direct, the same person may hold any two offices excepting those of president and vice-president.[20] Unless other-

Enforcing By-Laws.

Authority of Directors.

Executive Committee.

wise prescribed in the articles, the directors shall have authority to enact and enforce the by-laws of the corporation,[21] and such directors, if more than five in number, may appoint an executive committee of such board,[22] to have the active management of the business affairs of such corporation in the interim between full board meetings, subject to such restrictions and limitations as the board may impose upon such executive committee.

For corresponding provision of Act 232 of 1903, see Appendix B (9022).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 1, PART II

§220. President or Chairman.

15. The single, isolated fact that one is president, or chairman, of a corporation confers upon him no powers beyond the right to preside at meetings. Thus, it has been held that a president has no implied power to bind the corporation by signing notes in its name (McLellan v. Detroit File Works, 56 Mich. 579, 583 [1885]; Gould v. W. J. Gould Co., 134 Mich. 515, [1903]); nor has the president implied power to sell the stock of the company (Weed v. Construction News Co., 160 Mich. 644 [1910]); nor to agree to pay unearned wages, or to waive performance of a contract (Wray v. Tilden Saw Co., 198 Mich. 461, 466 [1917]); nor to make a contract which overrides a determination reached by the board of directors (Humphrey v. Onway-Alpena Telephone Co., 204 Mich. 97, 109 [1918]); nor to confess judgment against the corporation (Jones v. Avery, 50 Mich. 326, 328 [1883]; 3 Fletcher Cyc. Corp. §2055, p. 3241); nor to make an assignment for the benefit of creditors (Richardson v. Rogers, 45

Mich. 591 [1881]; 3 Fletcher Cyc. Corp. §2046, p. 3228). But where the president of a corporation is in active management of its business, he "must be presumed to have authority to do what is usually and ordinarily done by such agents or managers." Ceeder v. H. M. Loud & Sons Lumber Co., 86 Mich. 541, 544 (1891); Neal v. Novelty Leather Co., 198 Mich. 598, 604 (1917); Hirschmann v. Iron Range & Hudson Bay R. Co., 97 Mich. 384 (1893); Preston National Bank of Detroit v. George T. Smith Middlings Purifier Co., 84 Mich. 364, 382 (1890); Sarmiento v. Davis Boat & Oar Co., 105 Mich. 300, 302 (1895); Adams Mining Co. v. Senter, 26 Mich. 73, 76 (1872); Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332, 338 (1886); Whitaker v. Kilroy, 70 Mich. 635, 638 (1888).

The unauthorized action of a president, like that of any other agent, may be adopted by ratification (Gould v. W. J. Gould & Co., 134 Mich. 515, 516 [1903]; James B. Clow & Sons v. Dowagiac Gas Co., 163 Mich. 434, 438 (1910); Galvin v. Detroit Steering Wheel & Windshield Co., 176 Mich. 569, 574 [1913]).

The rights of a president as against his corporation are not impliedly greater than those of any other stockholder or creditor under like circumstances. Zagelmeyer v. Laughray Concrete Brick Co., 169 Mich. 589, 594 (1911).

§221. Vice-president.

16. The rules applicable to the president apply with equal force to a vice-president. He may bind the corporation by acts within the scope of his authority, but not otherwise. Drew v. Billings-Drew Co., 132 Mich. 65, 68 (1902).

§222. Secretary.

17. As stated by Mr. Cook: "The secretary is one of the corporate officers, but he has practically no authority." 3

Cook Corp. (7 ed.) §717, p. 2509, 2510. The secretary is the official keeper of the records of corporate meetings. Here his implied power ends. For authority to perform other acts, he must point to some charter or by-law provision, or to some action by the board of directors, McBroom v. Cheboygan Brewing & Malting Co., 162 Mich. 323, 328 (1910); Laird v. Michigan Lubricator Co., 153 Mich 52 (1908); Gould v. W. J. Gould & Co., 134 Mich. 515, 516 (1903); Stilwell-Bierce & Smith-Vaile Co. v. Niles Paper Mill Co., 115 Mich. 35 (1897); New York Iron Mine v. First National Bank of Negaunee, 39 Mich. 644 (1878); Northville State Bank v. Detroit Silver Refining Co., 181 Mich. 515 (1914).

One having knowledge of limitations upon the authority of a secretary is bound by such knowledge and cannot rely upon the secretary's apparent authority. Hallenback v. Powers & Walker Casket Co., 117 Mich. 680, 684 (1898).

§223. Treasurer.

18. The implied powers of the treasurer are very limited. He may receive and receipt for monies due the corporation (People v. Carter, 122 Mich. 668 [1900]); he may pay out corporate monies in accordance with the by-laws, or upon direction of the managing board (Smith v. Pinney, 86 Mich. 484 [1891]); he must conform to the provisions of the charter and by-laws and deliver up the corporate books and records to his successor. Coldwater Copper Mining Co. v. Gillis, 170 Mich. 126 (1912).

Authority to execute a note in the corporate name may be conferred upon a treasurer by parol. Right Worthy Grand Encampment I. O. O. F. v. First National Bank of Sturgis, 42 Mich. 461 (1880). Acts which a treasurer has been customarily permitted to do—such as making or endorsing commercial paper—bind the company in favor

of those having knowledge of and relying upon the practice. 3 Cook Corp. (7 ed.) §717, p. 2514. But in the absence of an established custom, the treasurer has no implied power to borrow money in the corporate name and issue its notes therefor (Craft v. South Boston R. Co., 150 Mass. 207 [1889], 5. L. R. A. 641). He has no implied power to enter into extraordinary contracts. Laird v. Michigan Lubricator Co., 153 Mich. 52 (1908).

Declarations of a corporate officer cannot be given in evidence as proof of his authority. "Were the rule (of agency) otherwise, the fortunes of every man would rest upon the veracity of his errand boy." Grover & Baker Sewing Machine Co. v. Polhemus, 34 Mich. 247, 248 (1876).

§224. Officers Who Need Not Be Stockholders.

19. The president and vice-president must be chosen from among the directors, and the directors are required to be and remain stockholders. But there is nothing in the act requiring the secretary and treasurer to be directors or stockholders. (§219.)

The same is true of other officers and agents. These may be as numerous as is desired, and will frequently include an assistant secretary, an assistant treasurer, a cashier, a general manager, a superintendent and general counsel. (§219.)

§225. Joinder of Offices.

20. Act 232 of 1903 [2 C. L. 1915, (9022)] permitted joinder of the offices of secretary and treasurer in one and the same person. In practice, however, the office of president was often united with that of treasurer. For this there seemed to be ample authority. 3 Cook Corp. (7 ed.) §712, p. 2436; Attorney General v. Detroit Common Coun-

cil, 112 Mich. 145 (1897); Preston National Bank of Detroit v. George T. Smith Middlings Purifier Co., 84 Mich. 364, 378 (1890). It is permitted by the present act. (§219.)

§226. Directors May Enact By-laws.

21. It is believed that this power, if left to the directors, must be exercised by the board *exclusively*. The stockholders, at the time of organization, may reserve the power. Failing to do so, they renounce it in favor of the board. The rule is stated to be that, "The charter of the corporation or the general law may . . . . expressly vest such power in the governing board. When this is done, the by-laws must, of course, be adopted, not by the stockholders or members, but by the board." 1 Fletcher Cyc. Corp. §486, p. 983. By-laws adopted by the stockholders are invalid, where power to make by-laws is vested in the board. 1 Thomp. Corp. (2 ed.) §969, p. 1185; 1 Cook Corp. (7 ed.) §4a, p. 22.

Where the directors have power to adopt a by-law, it may be adopted by a quorum of the board. Cahill v. Kalamazoo Mutual Fire Ins. Co., 2 Doug. (Mich.) 123, 136 (1845).

It will be observed that the power conferred by this act is not limited. (§219.) This distinguishes the present act from the statute under consideration in Borgards v. Farmers Mutual Ins. Co., 79 Mich. 440, 442 (1890).

§227. Executive Committee.

22. Under such a statute, when the board is not in session, the usual and ordinary business of the corporation may be transacted by the executive committee, except as restricted by limitations imposed by the board. 3 Fletcher Cyc. Corp. §2002, p. 3178. Clearly, the committee would

Amendment to the Statute

§228. Quorum, Votes and Proxies.

SECTION 6. A majority of the directors of every corporation convened according to the by-laws, shall constitute a quorum for the transaction of business,[23] and the stockholders holding a majority of *voting* stock, or a majority of the members of a non-stock corporation, shall be capable of transacting the business of a stockholders' or members' meeting, except as herein otherwise provided;[24] and at all such meetings of stockholders each such share shall be entitled to one vote[25] and at all meetings of non-stock corporations each member shall be entitled to one vote, unless otherwise provided in the articles. Excepting as hereinafter otherwise provided, stockholders and members of non-stock corporations may appear and vote in person or by proxy[26] duly made and filed, under such rules and regulations as may be provided in the by-laws. Any non-stock corporation may declare in its articles or by-laws what number of members less than a majority of all the membership present at a regularly called meeting, may transact the business of such meeting.[27]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

be without power to amend the by-laws. Hayes v. Canada, Atlantic & Plant Steamship Co. Limited, 181 Fed. 289 (1910). A majority of the executive committee, duly convened, constitutes a quorum, and may act. McNiel v. Boston Chamber of Commerce, 154 Mass. 277, 13 L. R. A. 559 (1891).

PART II, CHAPTER 1, SECTION 6

§228. Quorum, Votes and Proxies.

Quorum.

A majority of the directors of every corporation, convened according to the by-laws, shall constitute a quorum for the transaction of business;[23] and the stockholders holding a majority of stock, or a majority of the members of a non-stock corporation, shall be capable of transacting the business of a stockholders' or members' meeting, except as herein otherwise provided;[24] and at all such meetings of stockholders each share shall be entitled to one vote,[25] and at all meetings of non-stock corporations each member shall be entitled to one vote, unless otherwise provided in the articles. Excepting as hereinafter otherwise provided, stockholders and members of non-stock corporations may appear and vote in person or by proxy[26] duly made and filed, under such rules and regulations as may be provided in the by-laws. Any non-stock corporation may declare in its articles or by-laws what number of members less than a majority of all the membership present at a regularly called meeting, may transact the business of such meeting.[27]

Voting in Non-Stock Corporation.

For corresponding provision of Act 232 of 1903, see Appendix B (9026).

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 1, PART II

§229. Quorum of Directors.

23. The act follows the general rule, that a majority of the members of the board constitute a quorum for the transaction of business, and a majority of the quorum have power to bind the corporation by their vote. Ten Eyck v. Pontiac, Oxford & Port Austin R. Co., 74 Mich. 226, 233 (1889); Cahill v. Kalamazoo Mutual Ins. Co. 2 Doug. (Mich.) 123, 136 (1845).

§230. Quorum of Stockholders or Members.

24. Any business within the power of the members or stockholders may be transacted by a duly convened quorum, unless the statute requires a larger vote. Among the instances in which more than a quorum is required are the following:

(a) *Sale of entire assets* requires affirmative vote of three-fourths capital stock outstanding. (§129.)

(b) Consolidation requires same vote as sale of entire assets. (§135.)

(c) *Extension of term* of stock corporation while term is running requires two-thirds vote (§152) or if after term has expired, four-fifths vote. (§154.) In non-stock corporations, whether the term has, or has not, expired, a two-thirds vote is required. (§158.)

(d) *Voluntary dissolution* under this act, whether stock or non-stock, requires a two-thirds vote. (§170.)

(e) *Amendment of articles* changing name, location and other minor matters, requires a majority vote. (§244.)

(f) *Amendment of articles providing for preferred stock,* requires a two-thirds vote of stock outstanding. (§288.)

(g) *Amendment of articles increasing or diminishing* capital stock, requires a two-thirds vote. (§310.)

(h) *Mortgaging assets* (except purchase money mortgages) requires a two-thirds vote. (§316.)

(i) *Welfare work,* requiring not more than 10% per annum of surplus, demands a two-thirds vote; if appropriation is to be larger, unanimous consent of total capital stock is required. (§327.)

Where the majority required is fixed by statute the provision is of course controlling. But otherwise, a majority of a quorum controls the action of a meeting. Hill v. Town, 172 Mich. 508, 518 (1912). Ordinarily less than a majority cannot convene and act. Id. See also Star Line of Steamers v. Van Vliet, 43 Mich. 364 (1880).

§231. One Share One Vote.

25. "A share of stock is a voting unit; and in the absence of proper (i. e., valid) restriction, the right of a stockholder to vote his shares at corporate elections is an incident of ownership, and is in the nature of property." 1 Thomp. Corp. (2 ed.) §856, p. 1045; Taylor & Co. v. Southern Pacific Co., 122 Fed. 147 (1903). One holding less than a whole share cannot vote. In re Provident Building etc. Association, 62 N. J. L. 590.

When the fact that one is a stockholder is determined, the right to vote upon the stock held follows as a matter of course, unless the class of stock upon which the vote is offered is non-voting in character.

There is, however, one possible stockholder that cannot vote; though a corporation may lawfully acquire its own shares it cannot vote upon them; and this rule applies even where the shares of its own stock so owned are held in the name of a trustee. 1 Thomp. Corp. (2 ed.) §869, p. 1063.

§232. Determination of Right to Vote.

It is a general rule that the registered owner of stock is entitled to vote upon it. 2 Cook Corp. (7 ed.) §611, p. 1788. The Uniform Stock Transfer Act provides that "Nothing in this act shall be construed as forbidding a corporation: (a) To recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and *to vote as such* owner." 3 C. L. 1915, (11922). No doubt a provision in the articles of association, or by-laws, confining voting rights to registered stockholders is valid; and where such a provision exists voting rights are controlled thereby. Marshall Corp. p. 899. But, in the absence of such a provision, the holder of the legal title is entitled to vote. It has been held in this state that one who holds and owns a stock certificate endorsed to him in blank is entitled to vote the shares evidenced thereby. McLean v. Chas. Wright Medicine Co., 96 Mich. 479, 481 (1893); Mandlebaum v. North American Mining Co., 4 Mich. 464, 470, 471 (1857); Walker v. Detroit Transit R. Co., 47 Mich. 338, 350 (1882); Noller v. Wright, 138 Mich. 416, 420 (1904). One who holds a certificate endorsed in blank as collateral has the right to have it reissued in his own name, and, until the transfer is made upon the books of the company, he is without voice or vote in the company's affairs, at least so far as the collateral is concerned." Osborn v. Detroit Kraut Co., 193 Mich. 664, 672 (1916). As to the pledgee's voting rights after transfer, see 3 Fletcher Cyc. Corp. §1664, p. 2794.

§233. Voting By Proxy.

26. The right to vote by proxy does not exist unless expressly conferred by statute, charter or by-laws. 3 Fletcher Cyc. Corp. §1683, p. 2823. The present act

expressly extends the proxy privilege to stock and to non-stock corporations. (§225.)

The act provides that voting by proxy may be regulated by the by-laws. It follows that the form of the proxy or the formalities of its execution may be prescribed; also that its exercise may be restricted to stockholders or members—that is that only stockholders or members may be appointed as proxies. In the absence of such regulations, no particular form or method of execution is required, and any person capable of acting as an attorney-in-fact may be given a proxy. 3 Fletcher Cye. Corp. §§1688, 1689, pp. 2830, 2831; 2 Cook Corp. (7 ed.) §610, pp. 1783, 1787; 1 Thomp. Corp. (2 ed.) §§878, 879, pp. 1077, 1078.

It has been held that executors and administrators cannot give general proxies, because their discretionary powers are not subject to delegation. They may, however, give proxies containing express directions as to the manner in which the shares represented shall be voted. 3 Fletcher Cyc. Corp. §1687, p. 2829. A testator cannot direct by his will the manner in which majority shares held by him shall be voted over a long period of time, in disregard of the rights of the minority. Billings v. Marshall Furnace Co., 210 Mich. 1, 5 (1920); 9 A. L. R. 1239.

In general, one who owns stock in his own right, may vote it by proxy, under a permissive statute. Noller v. Wright, 138 Mich. 416 (1904). Where a stockholder or member is present by proxy at a meeting, he incurs the same estoppels that would have arisen if he had been present in person. Stradley v. Cargill Elevator Co., 135 Mich. 367, 375 (1904).

A proxy may be made general and continuing, or limited and temporary. When unrestricted, it confers authority to vote upon all subjects at all meetings of stockholders,

or members, of the corporation until revoked. 3 Fletcher Cyc. Corp. §1692, p. 2833.

For form of proxy, see §§700, 701, 702.

§234. Revocation of Proxy.

A proxy is always revocable, even though, in terms, it is made expressly irrevocable. 7 R. C. L. §323, p. 343; 2 Cook Corp. (7 ed.) §610, p. 1787; 1 Thomp. Corp. (2 ed.) §884, p. 1083. To this doctrine there is an important exception: when a valid voting trust is created to promote the best interests of the corporation and of all of its stockholders, irrevocable voting power may be conferred upon a trustee. 7 R. C. L. §323, p. 343. It is deemed best, however, to make the trustee the stockholder of record, and to cause the interests of the stockholders who have assigned their stock to the trustee, to be evidenced by trustee's certificates.

For form of revocation of proxy, see §703.

§235. Non-stock Quorum May Be Less than Majority.

27. If the articles and by-laws are silent upon the subject, attendance in person, or by proxy, of a majority of all members is necessary to constitute a quorum. It is practical in non-stock companies to reduce this number. (§228.) The by-laws in non-stock companies may conform to the common law rule, if desired, and provide that the members present at a duly called meeting shall constitute a quorum. Thomp. Corp. (2 ed.) §849, p. 1037.

PART II, CHAPTER 1, SECTION 7

§236. Directors' Power to Fill Vacancies.

Vacancies.

The directors shall have power to fill any vacancy which may happen in their board by

death, resignation, or otherwise, and such appointees shall hold office until their successors are appointed at the next succeding election.[28] Vacancies in the trustees of any trustee corporation shall be filled as hereinafter provided.[29]

For corresponding provision of Act 232 of 1903, see Appendix B (9023).

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 1, PART II

§237. Vacancies.

28. Less than a quorum cannot fill a vacancy. 3 Cook Corp. (7 ed.) §713 a, p. 2465. But if enough directors remain to constitute a quorum of the entire board, the power to fill vacancies may be exercised. 3 Fletcher Cyc. Corp. §1884, p. 3071.

§238. Resignations.

Resignations are the most frequent cause of vacancies. An officer or director of a private corporation may resign at will. This he may do by giving oral or written notice. Fearing v. Glenn, 73 Fed. 116, 117 (1896). Resignation takes effect immediately and without acceptance, unless its terms provide otherwise. 2 Cook Corp. (7 ed.) §624, p. 1899; 2 Thomp. Corp. (2 ed.) §1404, p. 435.

§239. Vacancies in Trustee Corporations.

29. Where the trust instrument provides for the filling of vacancies in trustee corporations, the method so provided controls. In the absence of such provision, application may

be made to the circuit court in chancery of the county where the principal business office of the corporation is located, which court is given appointive power. (§466.)

PART II, CHAPTER 1, SECTION 8

§240. Voting Cumulatively.

Cumulative Voting.

In all elections for directors of stock corporations, including corporations under the jurisdiction of the Michigan Public Utilities Commission, every stockholder holding voting stock shall have the right to vote in person or by proxy the number of stares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit.[30] All such corporations shall elect their directors annually,[31] and the entire number of directors shall be balloted for at one and the same time and not separately: *Provided,* That the articles and by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation in case the votes of a sufficient number of shares are recorded against such proposed amendment, which if cumulatively voted as herein provided would elect one or more directors, where the same number of shares if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board:[32] Provided further, That any non-profit or co-operative corporation may elect its directors for a longer term than one year as hereinafter provided.

Annual Election.

Term of Non-Stock Corporation.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 1, PART II

§241. Cumulative Voting.

30. By this provision of the law, the nature of the pre-existing right under 3 C. L. 1915, (11344) is not changed, but the privilege and requirement of cumulative voting in elections of directors is extended to a considerable number of classes of corporations formerly excluded. See Report Attorney General (Oren) 1903, p. 120; Report Attorney General (Bird) 1910, p. 63.

That the cumulative voting law does not impair vested rights, see Attorney General v. Looker, 111 Mich. 498 (1907), affirmed in Looker v. Maynard, 179 U. S. 44, 45 L. ed. 79 (1900). See also Dusenbury v. Looker, 110 Mich. 58 (1896). Of course this provision does not apply to corporations expressly excluded from the operation of the act, such as banks (Attorney General v. Bridgeman, 134 Mich. 379 [1903]) and partnership associations limited. The latter are under a special statute relating to cumulative voting. 2 C. L. 1915, (7966). They have never been regarded by our legislature as corporations. Attorney General v. McVichie, 138 Mich. 387 (1904).

§242. Entire Board Elected Annually.

31. This provision prevents division of the directors of stock corporations into classes holding for different terms. All terms of directors in such corporations end in one year and upon election of a successor. The successors of all must be elected at one and the same time. But the articles or by-laws of non-stock corporations may classify the directors and provide for terms of more than one year. (§240.)

§243. Amendment Reducing Number of Directors.

32. It is obvious that a minority, having sufficient votes to elect four members upon a board of nine, might be able to elect only one member upon a board of three. This statute aims to preserve to the minority such protection as may accrue from the board as constituted.

PART II, CHAPTER 1, SECTION 9

§244. Amendment of Articles.

Amendment of Articles.

Every corporation may at any annual meeting or at any special meeting called for that purpose, by a resolution adopted by a vote of a majority in interest of its outstanding capital stock, or by a majority vote of the members in non-stock corporations, amend its articles, including a change in name and location of its principal office, and as to any other matter for which a different vote is not required by law.[33] Any corporation, for pecuniary profit, formed under any law of this state, may, unless prohibited by law, amend its articles to provide for the enlarging of its corporate purposes to include the carrying on of any other lawful business or businesses in connection with its original purpose.[34] Such amendments shall become operative when a certificate containing the resolution and amendment, signed by the president and secretary of the corporation, has been filed as is provided herein for the filing of original articles.[35]

For corresponding provision of Act 232 of 1903, see Appendix B (9033).

§244. Amendment of Articles.

SECTION 9. Every corporation may at any annual meeting or at any special meeting called for that purpose, by resolution adopted by a vote of a majority in interest of its outstanding capital stock, or by a majority of the members in non-stock corporations, amend its articles, including a change in name and location of its principal office, and as to any other matter for which a different vote is required by law: [33] *Provided, That any benevolent or charitable corporation having one hundred or more members, may amend its articles by a majority vote of the members present at any regular or special meeting held for that purpose, where notice specifying the time, place and purposes of such meeting shall have been published for two successive weeks immediately preceding such meeting in a newspaper circulated at the place of the principal office of such corporation: Provided, further, That this provision shall not be deemed to prevent any such corporation from providing in its by-laws for further notice than that herein required.* Any corporations, for pecuniary profit, formed under any law of this state, may, unless prohibited by law, amend its articles to provide for the enlarging of its corporate purposes to include the carrying on of any other lawful business or businesses in connection with its original purpose. [34] Such amendment shall become operative when a certificate containing the resolution and amendment, signed by the president and secretary of the corporation, has been filed as is provided herein for the filing of original articles. [35]

Approved May 24, 1923.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 284, effective August 30, '23.

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 1, PART II

§245. As to Matters Requiring a Different Vote.

33. See §230.

§246. Multiple Purposes Available to Other Corporations.

34. The clause to which this note applies was injected into the act by an amendment which originated in the House. (H. J. 66 p. 833, April 18, 1921.) It is a very clear declaration of a change of public policy from the narrow concept of a single-purpose corporation, to the more rational idea of corporate activities made analogous to those of an individual or a partnership. The language employed is very broad in scope. Clearly it does not include banks, insurance companies, trust companies, building and loan associations, and other companies whose charters confine investment of their funds within a prescribed and limited field. In terms it includes all others formed for pecuniary profit.

§247. Certificate of Amendment in Triplicate.

35. "Filed as is provided herein for the filing of original articles" is construed to mean:

(a) That the certificate of amendment must be executed and sent to the Secretary of State in triplicate; (§101)

(b) That it must be accompanied by the fee of $5 for "examining, filing and certifying," as provided in Act 85 of 1921 (§675).

(c) That, if the amendment be an increase of capital stock a further fee of one mill ($1 per 1,000) upon each dollar of such increase shall be paid, as provided in Act 85 of 1921 (§677).

(d) That one copy of such amendment, duly certified by the Secretary of State, shall be filed in the office of the county clerk of the county in which the corporation maintains its principal business office. (§101.)

(e) That the third copy, duly certified by the Secretary of State, may be retained by the corporation for use as evidence.

For form of certificate of amendment, see §694.

PART II, CHAPTER 1, SECTION 10

§248. Removal of Office.

Removal to Another County.

In case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles a certificate that such corporation has thus removed, and said articles, together with said certificate, shall be left for filing immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove. Such corporation officers shall immediately upon such removal also cause a certificate thereof to be filed in the office of the Secretary of State, and also in the office of the county clerk of the county from which it removes.[36]

For corresponding provision of Act 232 of 1903, see Appendix B (9034).

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART II

§249. Certificate of Removal.

36. In case a corporation shall remove its principal business office from one county to another, the prescribed practice is

(a) To prepare certificates of removal to be executed by the president and secretary *in triplicate.*

(b) To attach one such certificate to a certified copy of the articles of association and file the same in the office of the clerk of the county to which the corporation has removed.

(c) To file a certificate of removal in the office of the Secretary of State. His filing fee thereon is $5.00.

(d) To file a certificate of removal in the office of the clerk of the county from which the corporation has removed.

It will be observed that the duty of filing certificates of removal is cast upon the corporation. (See §§169, 335, 362.)

PART II, CHAPTER 1, SECTION 11

§250. List of Stockholders.

List of Stockholders.

Every corporation formed under the laws of this state is hereby required to keep a correct list of all its stockholders who are residents of this state, together with a statement of the number of shares held by each stockholder, at their agency or office in this state, and if there be more than one, then at some one of such agencies or offices to be designated by the officers of such corporation. Such list of stockholders shall at all times be open to the inspection of the Secretary of State, or any state or local assessing officer for the purpose of obtaining copies thereof, or other information required in public business. The failure to keep such list of stockholders, together with statement of the number of shares of stock held by each, shall be deemed a misuser of the charter of such corporation.[37]

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 1, PART II

§251. Failure to Keep List of Stockholders.

37. The bill as originally drawn (House Bill 140) provided that such failure "shall be deemed a misuser of the charter of such corporation *and work a forfeiture thereof.*" The legislature struck out the last five words above quoted.

The evident intent of the language originally employed was to bring the delinquent corporation within the statute [3 C. L. 1915, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., (13536)] which provides that: "An information in the nature of quo warranto may also be filed by the attorney general, upon his own relation, or upon the relation of any private party, on leave granted, against any corporate body, whenever such corporation shall:

1. Offend against any of the provisions of the act or acts, creating, offering or renewing such corporation; or

2. Violate the provision of any law by which such corporation shall have *forfeited its charter by misuser.*

By striking out the words "and work a forfeiture thereof" one express penalty was removed, but offending corporations were not rescued from the possibility of quo warranto proceedings under the statute. No doubt so trifling an infraction as omission to keep an available list of stockholders would not, ordinarily, standing alone, be deemed sufficient to warrant drastic measures; but it might serve as one of several grounds sufficient, in the aggregate, to place the corporation upon trial of its right of existence.

For penalties in quo warranto proceedings, see 3 C. L. 1915, and Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., (13544); Attorney General v. National Cash Register Co., 182 Mich. 99, 127 (1914).

PART II, CHAPTER 1, SECTION 11 (Continued)

§252. Transfers and Books of Account.

Transfer of Shares.

Any person holding stock in any such corporation may have the same transferred upon the books of such agency within this state, upon the same terms, conditions, and restrictions as is provided by law, or the rules of such corporation, for such transfer at the principal office of such corporation, wherever it may be situated.[38] The books of every corporation containing its accounts shall be kept, and shall at all reasonable times be open in the city, village or town where such corporation is located, or at the office of the treasurer of such corporation within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same[39] in the said city, village or town or at said office; and as often as once in each year a true statement of the accounts of such corporation shall be made and exhibited to the stockholders.

For corresponding provision of Act 232 of 1903, see Appendix B (9031).

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 1, PART II

§253. Transfers of Stock.

38. The Uniform Stock Transfer Act [3 C. L. 1915, (11920) et seq., being Act No. 106 of 1913] is not affected by this section. That act provides that, "Title to

a certificate, and to the shares represented thereby can be transferred *only:*

(a) By endorsement in blank and delivery,

(b) By endorsement to a specified person, and delivery,

(c) By separate written assignment, delivered together with the certificate,

(d) By separate written power of attorney to assign, delivered together with the certificates."

All such transfers, however made, to be valid must be by, or in behalf of, "the person appearing by the certificate to be the owner of the shares represented thereby." Id. (11920).

Delivery of an unendorsed certificate by the owner with intent to transfer such certificates or shares, *prima facie* imposes upon the transferor an obligation to complete the transfer by making the necessary indorsements. Specific performance of this obligation may be required. Id. (11928). This is the common law rule as well. Boston Safe Deposit & Trust Co. v. Ivers Shepard Co., 224 Mass. 442, L. R. A. 1916 F, 488, 491. The rule applies although the certificate is made transferable only upon the books of the company. Herbert v. Simson, 220 Mass. 480, L. R. A. 1915 D, 733.

"*Delivery* means voluntary transfer of possession from one person to another." 3 C. L. 1915, (11941).

Notwithstanding the Uniform Stock Transfer Act, the corporation has the right (Id. [11922]):

(a) "To recognize the exclusive right of a person registered upon the books as the owner of shares to receive dividends and to vote as such owner, or,

(b) To hold liable for calls and assessments a person registered on its books as the owner of shares."

It is therefore competent for a corporation to provide in its articles, or by-laws, that only registered stockholders shall be entitled to dividends and voting rights. The com-

pany will be protected in recognizing only registered holders, except where want of registry is due to the company's own fault. 1 Machen Corp. §857, p. 692; 6 Fletcher Cyc. Corp. §3789, p. 6318; 4 Thomp. Corp. (2 ed.) §4319, p. 804; 2 Cook Corp. (7 ed.) §611, p. 1788.

The requirement of registry of transfers upon the books of the company is for the protection of the company, so that it may know who are its stockholders for purposes of notice, voting, payment of dividends and collection of assessments. The requirement may also afford protection to purchasers, creditors and persons dealing with the corporation. Foster v. Row, 120 Mich. 1, 22 (1899); Citizens' State Bank of Monroeville v. Kalamazoo County Bank, 111 Mich. 313, 320 (1896). Accordingly it is held that one who acquires shares without a registered transfer takes them subject to any right which the corporation may hold against them. (Michigan Trust Co. v. State Bank of Michigan, 111 Mich. 306, 312 [1896]), and that a dividend paid in good faith to the registered holder of stock cannot be recovered from the corporation by an unregistered transferee under a transfer of which the company had no notice. 6 Fletcher Cyc. Corp. §3802, p. 6349; Herrick v. Humphrey Hardware Co., 73 Neb. 809, 11 Ann. Cas. 201 (1905). In the Herrick case it was held that wrongful refusal to register a transfer was a conversion of the stock. That trover [now, in form, trespass on the case—3 C. L. 1915 (12350)] lies for conversion of shares, see Smith v. Thompson, 94 Mich. 381, 385 (1892); Hine v. Commercial Bank of Bay City, 119 Mich. 448, 449 (1899); Hubbel v. Blandy, 87 Mich. 209 (1891); Daggett v. Davis, 53 Mich. 35 (1884); McDonald v. McKinnon, 92 Mich. 254 (1892); Allen v. Dubois, 117 Mich. 115 (1898); Feige v. Burt, 124 Mich. 565 (1900); Morton v. Preston, 18 Mich. 60 (1869).

As between vendor and vendee, pledgor and pledgee, and

the like, it is well settled that a transfer by endorsement and delivery is sufficient to divest the transferor's title. People v. Quincy Mining Co., 177 Mich. 458, 463 (1913), and cases there cited.

A court of equity may set aside a transfer made without consideration in fraud of existing creditors, and may order the stock reinstated upon the books of the corporation in the name of the transferor, to the end that it may be reached by execution. Harnau v. Haight, 209 Mich. 604, 612 (1920).

Transfer by a widow and heirs of a deceased person is insufficient to pass title as against a subsequently appointed administrator. Morton v. Preston, 18 Mich. 60 (1869); Brobst v. Brobst, 190 Mich. 63, 67 (1916).

Transfer in reliance upon the decree of a lower court *not ordering* transfer is made at the peril of the corporation, which must respond to the registered owner in case the decree is subsequently reversed. 6 Fletcher Cyc. Corp. §3833, p. 6432.

Transfers tendered by executors, administrators and other persons purporting, or known, to be acting in a fiduciary capacity, demand the utmost caution in behalf of the corporation. All instruments relied upon as conferring the authority claimed should be required to be produced, and certified copies thereof usually should be preserved in the corporate files. If the proposed transfer be pursuant to provisions of a will, the transfer should be refused, unless in conformity with the testamentary provisions. Failure to observe these precautions may expose the corporation to unfortunate liabilities—liabilities which may develop many years after the transfer. See 6 Fletcher Cyc. Corp. §3838, p. 6444, also §3841, p. 6456, §3842, p. 6461.

§254. Transfers Made to Evade Liability.

Transfer of stock in a failing corporation for the purpose

of evading liability as a stockholder will not relieve the transferor of his obligation. Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co., 166 Mich. 618, 635 (1911).

As against a receiver of a corporation, one may not relieve himself of liability by a transfer made after failure and actual suspension of business, even though the transfer was made in good faith. May v. McQuillan, 129 Mich. 392 (1902).

One cannot claim an immunity from liability upon a ground inconsistent with his previous conduct. Foster v. Row, 120 Mich. 1, 16 (1899).

§255. Restraint upon Transfer of Shares.

It is generally held that, in the absence of statutory authority, a by-law restraining the free transfer of shares is void. Lufkin Rule Co. v. Secretary of State, 163 Mich. 30, 33; 10 Cyc. 579; 1 Thomp. Corp. (2 ed.) §1007, p. 1218.

Where stockholders, for their own benefit, agree upon a by-law restraining transfer, it is enforcible as a contract among those who are parties to it. Weiland v. Hogan, 177 Mich. 626 (1913).

The decisions of other states upon the validity of by-laws giving the corporation, or its stockholders, the first right to purchase shares offered for sale by other members are in irreconcilable confusion. 1 Fletcher Cyc. Corp. §513, pp. 1080, 1081. It cannot be doubted that similar optional rights may be lawfully created by contract. The difficulty is not in the optional element, but in the restraint. By-laws must be reasonable, and the restraint of alienation is held to be unreasonable. (Victor G. Bloede Co. v. Bloede, 84 Md. 129; 33 L. R. A. 107 [1896]). Statutory permission to enact such by-laws cannot be inferred from the general

expressions found in this portion of the act. 1 Fletcher Cyc. Corp. §513, p. 1080. The "rules, conditions and restrictions" there mentioned must be found in the law, or must be reasonable at all events. Nor would anything be gained by incorporating the restriction in the articles of association under the permission to embody therein "any lawful provision which the incorporators may deem advantageous for . . . . defining, limiting and regulating . . . . the rights and privileges of stockholders." This has been attempted. Act 232 of 1903 carried a similar permission; and a restraining provision embodied in articles tendered for record under that act was held "incompatible with the right of disposal, which is incident to the ownership of shares of stock," and "against public policy as embodied in our statutes." Lufkin Rule Co. v. Secretary of State, 163 Mich. 30, 34 (1910).

Clearly, if such optional rights are to be enjoyed, they much be created by contract among the interested parties. This is true even in the case of industrial stock. (§321.)

§256. Right to Inspect Corporate Records.

39. This provision follows §15 of Act 232 of 1903, 2 C. L. 1915 (9031). Under it the right conferred is absolute and the motive immaterial. This is the rule supported by the preponderance of authority. 4 Thomp. Corp. (2 ed.) §4516, p. 990; 4 Fletcher Cyc. Corp. §2815, p. 4092. But the remedy is by the discretionary writ of mandamus; and, although the abstract right may exist, its enforcement may be properly denied where the purpose of the inspection is unconscionable. State of Washington v. Bucklin, 145 Pac. 58, L. R. A. 1915 D, 285, 288 (1914). It is submitted that this is the correct rule, although the

weight of authority is said to be against it. 4 Fletcher Cyc. Corp. §2815, p. 4091.

The statutory right is limited by the act to books of account and statements of the corporation. The statements no doubt include such reports as are required to be made from time to time to the stockholders, such statements as may have been made by auditors employed to examine the books, and the list of stockholders containing "a statement of the number of shares held by each." (§250.)

The right of inspection given by the statute may be enlarged by appropriate provisions in the by-laws. Such by-laws have been held to have "all the force and effect of a statute" (State of Washington v. Bucklin, ante) except as against third parties. 10 Cyc. 351.

The common law right of inspection is said to extend to all of the books and records of the corporation. It is a broad right, but is conditional. It cannot be exercised in furtherance of improper motives, or to gratify idle curiosity. It will not be enforced except upon a showing of its propriety and necessity. People v. Walker, 9 Mich. 328, 330 (1861); Woodworth v. Old Second National Bank, 154 Mich. 459, 466 (1908); Weihenmayer v. Bitner, 88 Md. 325, 45 L. R. A. 446 (1898); Kuhbach v. Irving Cut Glass Co., 220 Pa. 427, 20 L. R. A. (N. S.) 185 (1908). The rule followed by the Supreme Court of the United States in relation to enforcement of the common law right of inspection is stated by Mr. Justice Day as follows: "In issuing the writ of mandamus the court will exercise a sound discretion, and grant the right under proper safeguards to protect the interests of all concerned. The writ should not be granted for speculative purposes, or to gratify idle curiosity, or to aid a blackmailer, but it may not be denied to the stockholder who seeks the information for legitimate purposes." Guthrie v. Harkness, 199 U. S. 148, 50 L. ed. 130, 133 (1905).

PART II, CHAPTER 1, SECTION 12

§257. Annual and Special Meetings.

Annual Meetings.

The annual meeting of all corporations shall be held prior to June thirtieth in each year on such date as shall be fixed in the by-laws. Any corporation heretofore organized whose fiscal year ends in any month between the first day of July and the thirty-first day of December may continue to have its annual meeting within such period, but such exemption from the general provision herein made shall not relieve or excuse such corporation from making and preparing a report of its condition and fiscal standing, as required in chapter two, part five of this act.

Special Meetings.

Special meetings of the stockholders or members of any such corporations may be held pursuant to the call of the directors at any time. At least three days' notice of any such meeting shall be given in such manner as the by-laws may prescribe. Meetings of the stockholders or members of such corporations shall be conducted in such manner as the by-laws may direct.[40]

COMMENTARIES ON THE TWELFTH SECTION CHAPTER 1, PART II

§258. Meetings of Stockholders.

40. This section is new. It is a guide and supplement to by-laws. The provision enabling the calling of special meetings by the board of directors is not exclusive. The by-laws may provide other methods by which such meetings may be called.

Amendment to the Statute

§257. Annual and Special Meetings.

SECTION 12. The annual meeting of all corporations shall be held * *[a] in each year on such date as shall be fixed in the by-laws. * * *[b] Special meetings of the stockholders or members of any such corporations may be held pursuant to the call of the directors at any time. At least three days' notice of any such meeting shall be given in such manner as the by-laws may prescribe. Meetings of the stockholders or members of such corporations shall be conducted in such manner as the by-laws may direct. [40]

a. The words omitted are: "prior to June thirtieth."

b. The words omitted are: "any corporation heretofore organized whose fiscal year ends in any month between the first day of July and the thirty-first day of December may continue to have its annual meeting within such period, but such exemption from the general provision herein made shall not relieve or excuse such corporation from making and preparing a report of its condition and fiscal standing as required in chapter two, part five of this act."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

§259. At Least Three Days' Notice.

In any event not less than three days' notice of a special meeting of stockholders, however called, must be given. Under some of the earlier decisions, it would seem that three full days must intervene between the date of service of the notice and the date of the meeting. People v. Highway Commissioner, 38 Mich. 247, 248 (1878); Lane v. Burnap, 39 Mich. 736 (1878); Griffin v. Forrest, 49 Mich. 309, 312 (1882); Coquard v. Boehmer, 81 Mich. 445 (1890); Cox v. Highway Commissioner, 83 Mich. 193 (1891); Rifenburg v. Muskegon, 83 Mich. 279, 281 (1890). But the more recent decisions support the rule that, when notice during a definite period of days is required before an event is to occur, the day of the event is included in the computation. 38 Cyc. 322; 26 R. C. L. §19, p. 745; 2 Abbott Cyc. Mich. Prac., p. 1781; City of Port Huron v. Wright, 150 Mich. 279, 286 (1907); Lemon v. Hampton, 128 Mich. 182, 183 (1901); Chaddock v. Barry, 93 Mich. 542, 546 (1892). The earlier cases are said to be practically overruled. Lemon v. Hampton, 128 Mich. 182, 183 (1901); Halbert v. San Saba Springs, etc. Association, 89 Tex. 230, 49 L. R. A. 193 (1896) and notes.

There is authority for saying that, if the period of notice does not exceed a week, a Sunday falling within the period should be excluded from the computation. 26 R. C. L. §26, p. 751; Drake v. Andrews, 2 Mich. 204, 206 (1851); Caupfield v. Cook, 92 Mich. 626 (1892); First National Bank of St. Ignace v. Williams Milling Co., 110 Mich. 15 (1896); Crozier v. Allen, 117 Mich. 171, 172 (1898).

Insufficient notice will render the proceedings invalid as against a stockholder, or member, injured by the insufficiency and not estopped to complain. 2 Machen Corp. §1202, p. 1001; Marshall Corp. §337, p. 890; Tuttle v.

Michigan Air Line R. Co., 35 Mich. 246, 251 (1877). But one who is present and participates in a meeting, in person or by proxy, will not be heard to complain that he received no notice, or that the notice was insufficient, or that notice was not sent to others. Foote v. Greilick, 166 Mich. 636, 642 (1911); Stradley v. Cargill Elevator Co., 135 Mich. 367, 375 (1904).

§260. Notice of Special Meeting Must State Objects.

It is well settled that notice of a special meeting of stockholders must state the objects for which the meeting is called. Tuttle v. Michigan Air Line R. Co., 35 Mich. 246, 252 (1877); Beecher v. Marquette & Pacific Rolling Mill Co., 45 Mich. 103, 107 (1881). Addition of general terms to a specific notice—as, for example, that the special meeting "will transact such other business as may lawfully come before it"—does not enlarge the scope of the meeting. Beecher v. Marquette & Pacific Rolling Mill Co. (ante); 3 Fletcher Cyc. Corp. §1639, p. 2742.

§261. Service of Notice.

Notice must be personal, unless otherwise provided by charter of by-laws. Tuttle v. Michigan Air Line R. Co., 35 Mich. 246 (1877). But personal notice is insufficient if some other form of notice is specified by the charter or by-laws. Wescott v. Minnesota Mining Co., 23 Mich. 144, 162 (1871). If no time of service or period of notice is specified, the time must be reasonable, "in order that the person to whom it is addressed may, if sent by mail, be presumed to have received it, and have sufficient time, traveling in the usual and accustomed manner, to get there." Covert v. Rogers, 38 Mich. 363, 367 (1878).

Unless some other form of notice is prescribed by statute, it is competent to provide by by-law for service of notice

by mail. Stradley v. Cargill Elevator Co., 135 Mich. 367, 375 (1904). Notice received by unregistered mail is sufficient, even though the by-law provides that the medium of notice shall be registered mail. Simek v. Lodge No. 86 of the Bohemian Slavonian Benevolent Society, 118 Mich. 81 (1898).

§262. Presumption of Due Notice.

Due notice is presumed. The burden of proof is upon those who allege irregularity. Wells v. Rodgers, 60 Mich. 525, 530 (1886); Stradley v. Cargill Elevator Co., 135 Mich. 367 (1904); 3 Fletcher Cyc. Corp. §1640, p. 2743. But this presumption does not extend to one who alleges rights dependent upon special statutory proceedings. In such case, compliance with the statute must be shown. Rodgers v. Wells, 44 Mich. 411 (1880); Peninsular R. Co. v. Tharp, 28 Mich. 505 (1874); Mansfield, Coldwater & Lake Michigan R. Co. v. Drinker, 30 Mich. 124 (1874); Pingree v. Michigan Central R. Co., 118 Mich. 314 (1898).

Notice is for the benefit of the stockholders. All requirements relating to any notice may be waived either expressly or by acts of the stockholders amounting to a waiver. Beecher v. Marquette & Pacific Rolling Mill Co., 45 Mich. 103, 109 (1881); West Michigan Park Association v. Pere Marquette R. Co., 172 Mich. 179, 189 (1912); Eureka Iron & Steel Works v. Bresnahan, 60 Mich. 332 (1886); McLaughlin v. Detroit & Milwaukee R. Co., 8 Mich. 99 (1860).

§263. Corporate Records.

The corporate records are the permanent memory of the corporation's acts. Where there is a complete record, the record is the best evidence. Bartholomew v. Walsh, 191 Mich. 252, 259 (1916); Murray W. Sales & Co. v.

German-American Savings Bank, 192 Mich. 540, 543 (1916). Unaccompanied by proof of their correctness, corporation account books, however, are mere self-serving statements, and are inadmissible. Potter Michigan Evidence, p. 593; Tioga Mfg. Co. v. Stimson, 48 Mich. 213, 217 (1882). And the same is true of a letter written by an agent to his corporate principal when offered as evidence against a third party. Drake Coal Co. v. Croze, 165 Mich. 120, 125 (1911). Corporate account books are evidence to the same extent, and under the same circumstances, as the books of a private individual, Columbia Phonograph Co. v. Sherman, 166 Mich. 324 (1911).

Corporation records, to be admissible, must be shown to be the records of the company kept by proper authority. Monger v. New Era Association, 171 Mich. 614, 626 (1912). Where this is established, it is not necessary that the records bear the signature of the recording officer. Id.

Unrecorded corporate action may be proved by parol evidence. Reynick v. Allington & Curtis Mfg. Co., 179 Mich. 630 (1914); Ismon v. Loder, 135, 348 (1904); Wheat v. Van Tine, 149 Mich. 314, 317 (1907); Township of Taymouth v. Koehler, 35 Mich. 21, 24 (1876); American Seed Co. v. Cole, 174 Mich. 42, 50 (1913). Upon a proper showing that the original record has been lost and has not been found after diligent search, a copy of the lost record is admissible in evidence. Gelder v. Welsh, 169 Mich. 490, 495 (1912); Phillips v. United States Benevolent Society, 125 Mich. 186 (1900).

Erasures in a record are presumed to have been made before it was signed, in the absences of counterveiling circumstances. Ensign v. Fogg, 177 Mich. 317, 327 (1913).

CHAPTER 2

CAPITAL STOCK AND FINANCES

(References are to annotator's sections)

§264. Stock, Redemption, Par Value.
§265. Classes of Stock.
§266. Preferences.
§267. Denominations.
§268. Fixed Date of Redemption.
§269. Right of Earlier Redemption at a Premium.
§270. Right to Convert into Other Securities.
§271. Additional Participation.
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§275. Notice of Redemption.
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Subdivision 1, Preferred and Common Stock

Part II, Chapter 2, Section 1

§264. Stock, Redemption, Par Value.

Limitations of Preferred Stock.

Any stock corporation shall have power to create and issue certificates for such kinds of stock, viz.: General or common stock, and preferred stock[1] with such preferences[2] as it may deem advisable, which preferred stock, if preferred as to principal, shall at no time exceed two-thirds of the authorized capital stock, and shall, if preferred as to principal,[3] be redeemed by the corporation at par at a certain time to be fixed in the articles and to be expressed to the certificates therefor: *Provided,* That such corporation may, by a provision clearly expressed in its articles, and in the certificates therefor, reserve the right to redeem or retire at a premium any or all of such stock preferred as to principal prior to the time when the same must

Amendment to the Statute

§264. Stock, Redemption, Par Value.

SECTION 1. Any stock corporation shall have power to create and issue certificates of such kinds of stock, viz.: General or common stock, and preferred stock,[1] with such preferences [2] as it may deem advisable, which preferred stock * * *[a] shall, if preferred as to principal, [3] be redeemed by the corporation at par at a certain time to be fixed in the articles and to be expressed in the certificates therefor: *Provided*, That such corporation may, by a provision clearly expressed in its articles, and in the certificates therefor, reserve the right to redeem or retire at a premium any or all such stock preferred as to principal prior to the time when the same must be redeemed as above provided, and upon reasonable notice to be given to the stockholder in a manner to be fixed by the by-laws. [4] None of said preferred stock shall, however, be redeemed or retired at a premium unless at the time of such redemption or retirement the assets of the corporation taken at a fair valuation over and above all the indebtedness of the company, both matured and unmatured, are equal to the outstanding stock, both common and preferred, plus the premium proposed to be paid upon such redemption. [5] Shares of stock, whether common or preferred, shall be of the denomination of ten dollars or some multiple of ten dollars, or of twenty-five dollars; but not more than one hundred dollars, and unless otherwise described in the articles the value of such shares as therein stated shall be deemed to be the par value. [6] The amount of total authorized stock shall not be less than one thousand dollars, and the amount of capital stock which must be subscribed and paid in before it actually begins business, must be definitely stated in its articles. [7]

a. The words omitted are: "if preferred as to principal, shall at no time exceed two-thirds of the authorized capital stock and."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

be redeemed as above provided, and upon reasonable notice to be given to the stockholder in a manner to be fixed by the by-laws.[4] None of said preferred stock shall, however, be redeemed or retired at a premium unless at the time of such redemption or retirement the assets of the corporation taken at a fair valuation over and above all the indebtedness of the company, both matured and unmatured, are equal to the outstanding stock, both common and preferred, plus the premium proposed to be paid upon such redemption.[5] Shares of stock, whether common or preferred, shall be of denomination of ten dollars or some multiple of ten dollars, or of twenty-five dollars; but not more than one hundred dollars, and unless otherwise described in the articles the value of such shares as therein stated shall be deemed to be the par value.[6] The amount of total authorized stock shall not be less than one thousand dollars, and the amount of capital stock, which must be subscribed and paid in before it actually begins business, must be definitely stated in its articles.[7]

Redemption.

Denomination of Shares.

For corresponding provision of Act 232 of 1903, see Appendix B (9050).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART II

§265. Classes of Stock.

1. In providing for common stock and preferred stock, the preexisting classification, 2 C. L. 1915, (9050), is adopted. The authorization of non-par stock and of industrial stock is new.

Common stock enjoys no special contractual advantages.

All such shares are upon a common plane of equality. Preferred stock is so called because it is given preferences not enjoyed by the common stock. Non-par stock may be given preferences, except as to principal. Industrial stock may be either common or preferred.

Common stock usually enjoys voting power. Preferred stock may be denied voting power by appropriate provision to that end in the articles of association. But if the capital represented by common stock becomes impaired to the extent of ten per cent, or if dividends payable upon preferred shares are passed, or remain unpaid, for sixty days after falling due, the preferred stock may exercise voting rights equally, share for share, with the common stock, notwithstanding provisions contained in the articles. (§283.)

Not more than two-thirds of the authorized capital stock may be preferred.

§266. Preferences.

2. By allowing the creation of preferred stock with such preferences as may be deemed advisable, the legislature has equalled, in this respect, the liberality of New Jersey and Deleware legislation. Gen. Corp. Act N. J.—Revision 1896—§18; Gen. Corp. Laws Del. §13. But it has not as yet been deemed wise to go to the extent permitted in Maine, where preferences need not be recited in the articles and may be created by by-law, or by resolution. R. S. Maine, 1903, Chap. 47, §54.

The restrictions and requirements provided by act 84 of 1921 are:

(a) That the stock preferred as to principal shall in no case exceed two-thirds of the *authorized* capital stock; (§264)

(b) That the par value and "conditions" and number of preferred shares shall be stated in the articles; (§77)

(c) That the date of redemption of shares preferred as to principal must be fixed in the articles and expressed in the certificates; (§264)

(d) That the right of redemption at a premium prior to the due date of redemption, if such right be reserved, must be expressed in the articles and certificates; (§264)

(e) That the optional right to convert preferred stock into common stock, bonds, securities or any other class of stock, if granted to the holder must be expressed in the articles and certificates; (§281)

(f) That the right of preferred stock to participate with the common stock in profits over and above the fixed preferential dividend shall be stated and defined in the articles and certificates; (§281)

(g) That restrictions, if any, upon the voting rights of preferred stock must be stated in the articles; and (§283)

(h) That certificates of stock, preferred as to principal, shall state the amount which such shares shall be entitled to receive "on account of principal from the *surplus assets* of the corporation in preference to holders of other shares" in the event of liquidation. (§283.)

Briefly restated, the articles and preferred stock certificates should show:

The number and denominations of preferred shares, (§77)

The fixed date of redemption, (§264)

The right, if any, and terms of earlier redemption, (§264)

The right, if any, of conversion into other securities, (§281)

The right, if any, of additional participation, (§281)

The restrictions, if any, upon voting rights, (§283)

The participation, if any, in surplus upon liquidation. (§283.)

§267. Denominations.

Common stock and preferred stock need not be of the same par value, and it is not necessary that all classes of preferred stock be of the same par value. Ordinarily it is preferable, because simpler, to make the par value of all shares uniform.

§268. Fixed Date of Redemption.

As to stock preferred as to principal, there must be a fixed date of redemption. By analogy to the rule applicable to negotiable instruments, it would seem clear that the date is sufficiently certain if the shares are made redeemable *on or before* a stated date. Mattison v. Marks, 31 Mich. 421 (1875); Bunker on Negotiable Instruments, p. 40, 41; 7 Cyc. 601. Thus, to comply with the statute in cases where the time of redemption is problematical, and where the corporation desires to redeem as its circumstances may permit, the redemption date may be fixed to be "on or before" the date (naming it) of expiration of the corporate charter.

§269. Right of Earlier Redemption at a Premium.

In cases where it is deemed advisable to reserve the optional right of redemption before the fixed due date, a premium may be provided, to compensate the preferred stockholders for premature surrender. This provision may be: Any or all of the preferred shares issued by this corporation shall be subject to redemption at any time prior to the date fixed for redemption, by payment to the holder thereof of the par value thereof, together with all dividends accrued thereon, and together with a premium of $5 per share.

That a valid redemption privilege is binding upon the stockholders, see Weidenfeld v. Northern Pacific R. Co.,

129 Fed. 305 (1904); Mannington v. Hocking Valley R. Co., 183 Fed. 133, 143 (1910). In the case last cited it is said: "The provision relating to the redemption of preferred stock inserted in the articles of incorporation and in the stock certificates was within the terms of the statute, and *each stockholder, by his purchase and acceptance of stock,* assented to such provision and become bound thereby as a part of a valid and enforcible contract between himself and the corporation." Thomp. Corp. (2 ed.) §3600; 6 Fletcher Cyc. Corp. §3644, p. 6047.

§270. Right to Convert into Other Securities.

This statutory provision is new in this state. Under §35 of Act 232 of 1903, it was held that no right to convert preferred stock into common stock could be given, and that the preferences expressed in the statute were exclusive of all others. Report Attorney General (Kuhn) 1911, pp. 254, 255.

The conversion privilege permitted by the present act may be expressed as follows:

The lawful holder hereof shall have the right at any time after five years from the ..... day of ....., 19..., to surrender this certificate, and the shares evidenced hereby, to this corporation, and to receive, upon demand, in exchange therefor, a certificate issued by this corporation in such holder's name for common stock equalling, share for share, and dollar for dollar of par value, the total number of shares of preferred stock evidenced hereby.

The provision may be that preferred stock shall be exchangeable for bonds. But in any event, the exchange for "common stock, bonds or other securities or any other class of stock" is to be *at the option* of the holder of the preferred shares. (§281.) Thus, a corporation cannot *require* a holder of preferred stock to accept bonds for his

shares. Nevertheless, if the corporation has the present right to redeem its preferred stock, it may sell its bonds for cash and use the proceeds to retire its preferred stock. United States Steel Corporation v. Hodge, 64 N. J. Eq. 607, 60 L. R. A. 742 (1903); Allen v. Francisco Sugar Co., 193 Fed. 825 (1912); 6 Fletcher Cyc. Corp. §3644, p. 6045.

§271. Additional Participation.

Enhancement of the attractiveness of preferred stock is frequently accomplished by giving it some further right to participate in profits over and above its fixed rate of return. This is expressly permitted by the act. (§281.) The following is one of the many forms in which it may be expressed:

After all outstanding common stock shall have received a dividend of seven per cent in any year, all further dividends, if any be declared in such year, shall be paid upon all shares of common stock and of preferred stock outstanding, irrespective of the class to which such shares belong, and without preference of one share over another.

§272. Restrictions upon Voting Rights.

Unless restricted, preferred stock will be entitled to vote equally with the common stock. But the right to deny all voting power to preferred stock is amply conferred by the act. "The rights and privileges of the stockholders, or any class or classes of stock and stockholders" may be "limited." Part I, Chap. 2, §116. "Each share shall be entitled to one vote . . . . . *unless otherwise provided* in the articles." Part II, Chap. 1, §228. The cumulative voting feature of the law is limited to stockholders *"holding voting stock."* Part II, Chap. 1, §240. "Every corporation issuing preferred stock shall be controlled by a board of directors elected by such preferred and common stockholders

according to their respective holdings, *except* when otherwise provided in the articles." Part II, Chap. 2, Sec. 4, §283. Under such a statute, all voting rights (except under certain circumstances prescribed by the act) may be denied to preferred stockholders by an appropriate provision in the articles. The clause may simply state that. The preferred stockholders shall not be entitled to vote. 6 Fletcher Cyc. Corp. §3638, p. 6035; 4 Thomp. Corp. (2 ed.) §3605, p. 184, et seq.; 1 Machen Corp. §570, p. 473; 1 Cook Corp. (7 ed.) §269, p. 777 and notes.

§273. Participation in Surplus on Liquidation.

In case of retirement from business, voluntary dissolution or insolvency, the holders of stock preferred as to principal are to be paid (after payment of all corporate debts and obligations) the par value of their shares plus unpaid fixed dividends due. Unless the articles, or certificates, provide otherwise, the preferred stock will be entitled to no further participation. If the articles and certificates are silent, the statute gives the residue to "the holders of *other classes* of stock, as their interests may appear. 1 Machen Corp. §567, p. 471; 4 Thomp. Corp. (2 ed.) §3613, p. 192. (§283.)

§274. Preference Shares Not Preferred as to Principal.

3. The act carefully distinguishes between preference shares preferred as to principal (or capital) and stock not so preferred. It follows that there may be a class or classes of preferred stock without priority or preference over the common stock, except as to dividends. This of course would be created by proper provisions in the articles and certificates. It may be given all of the rights of common stock, plus priority of participation in profits, but it will

be subordinate to the preferred stock having capital preferences.

§275. Notice of Redemption.

4. The notice of redemption is merely notice that the corporation has elected to exercise its optional right to redeem. Such notice must be reasonable, and is to be given and served in the manner provided in the by-laws for service of notices. No doubt written notice, reasonable in duration and actually served, will be sufficient in case, through inadvertence, there is no appropriate by-law.

§276. Impairment of Capital by Exercise of Redemption Privilege.

5. This provision inhibits exercise of the redemption privilege to the impairment of the corporation's capital stock. Neither the corporation, nor any of its stockholders, have any rights paramount to those of the corporation's creditors. This is in harmony with the trust fund doctrine established in this state.

Assets wrongfully turned over to holders of preferred stock may be followed by creditors. American Steel & Wire Co. v. Eddy, 130 Mich. 266, 267 (1902); Id. 138 Mich. 403, 407 (1904); Knight v. Alamo Mfg. Co., 190 Mich. 223, 226 (1916).

6. *Par Value.* See §264.

7. *Authorized Capital.* See §§264, 277.

PART II, CHAPTER 2, SECTION 2

§277. Capital Stock, Payment, Fraud.

Amount Paid at Organization.

The amount of capital stock of any stock corporation paid in at the time of executing the

Ten Per Cent Paid in.

articles shall not be less than ten per cent of the subscribed capital, and in no case less than one thousand dollars, except in the case of a capitalization of two thousand dollars or under, when it shall be not less than twenty-five per cent thereof,[8] and the amount so paid in shall not be reduced below such per cent of its capital. Such capital may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description[9] of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in the absence of fraud:[10] *Provided,* That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court of competent jurisdiction for satisfaction of any judgment or decree against such corporation:[11] And *provided further,* That there shall be made and attached to any such article an affidavit by at least three of the incorporators, that they know the property described in such articles and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated.[12]

Payment in Property.

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 2, PART II

8. *Capital Paid in at Time of Executing Articles.* See §79.

§278. Itemized Description of Property.

9. The language of the act as to description, valuation and kind of property available as payment for stock is taken almost verbatim from Act 232 of 1903, 2 C. L. 1915, §9018. This language was construed in Brown v. Weeks, 195 Mich. 27 (1917). *Substantial compliance is all that is required.* In Brown v. Weeks (ante) a lump sum valuation covering the machinery, equipment, fixtures, materials, trademarks, mailing lists, corporate name and good will of a going concern was held conclusive in the absence of fraud.

Fraud, or want of substantial compliance with the statute, leaves the valuation subject to review by the courts. Wood v. Sloman, 150 Mich. 177 (1907); Macomber v. Endion Grape Juice Co., 160 Mich. 54, 59 (1910); Nichols v. Buell, 157 Mich. 609 (1909); Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co., 170 Mich. 205 (1912).

§279. Valuation.

10. Valuation by the *directors* is conclusive in the absence of *actual* fraud. (§197.) Valuation by the *organizers* is conclusive in the absence of *all* fraud, *actual or constructive.* (§277.)

§280. Property which May be Used in Payment for Stock.

11. In general, any property not clearly useless to the corporation, and which is subject to sale under process of

any court may be taken for stock. Thus a patent may be taken. Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co., 166 Mich. 618, 629 (1911). And so may registered trade marks and good will. Brown v. Weeks, 195 Mich. 27, 40 (1917).

After organization, stock may be paid up in services of commensurate value. Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co. (ante); Peninsular Savings Bank v. Black Flag Stove Polish Co., 105 Mich. 535 (1895). Or by assuming a debt of the company and causing the company's release therefrom. Clay Lumber Co. v. Hart's Branch Coal Co., 174 Mich. 613 (1913). Or upon a contract that payment is to be made from future dividends. Hathaway v. Vaughan, 162 Mich. 269 (1910).

12. For comment on affidavit of value and transfer see §84. For form see §689.

PART II, CHAPTER 2, SECTION 3

§281. Preferred Stock—Conversion, Participation.

Conversion of Preferred.

The preferred stock may be made convertible at the option of the holder into common stock or any other class of stock, bonds or other securities on terms clearly set forth in the articles and expressed in the certificates therefor.[13] In case provision for such conversion is so made, such corporation shall at all times have on hand in its treasury sufficient shares of its common stock or such other stock as may be stipulated for, to carry such conversion into effect. In providing for the issuance of preferred stock, the corporation may further provide that such stock shall, in addition to the dividend fixed therein, also participate with the common stock, in such proportions as the

Proportion Agreed.

stockholders may agree upon and provide for in the articles, in any dividends which the corporation may at any time declare after there shall be declared and paid upon the common stock for the then current year a rate equal to that paid upon the preferred stock.[14]

For corresponding provision of Act 232 of 1903, see Appendix B (9050).

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART II

13. For convertibility see §281.

§282. Participation of Common and Preferred Shares.

14. The provision specially authorized may be stated in the articles and certificates as follows:

After payment of the fixed dividend of seven per cent upon the preferred stock for the then current year, a like dividend of seven per cent may be paid exclusively upon the common stock for the like period, and thereafter dividends for such year, if declared, shall be paid equally, pro rata upon common stock and upon preferred stock, without further distinction, and without preference to one share over another.

PART II, CHAPTER 2, SECTION 4

§283. Preferred Stock—Rights, Liabilities, Immunities.

Immunity of Preferred.

In no event shall the holder of such preferred stock, preferred as to principal, be individually

Labor Debts.

or personally liable for the debts or other liabilities of said corporation, excepting debts for labor.[15] Every corporation issuing preferred stock shall be controlled by a board of directors elected by such preferred and common stockholders voting according to their respective holdings, excepting when otherwise provided in the articles:[16] *Provided always,* If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof or any dividend due on the preferred stock shall remain unpaid for sixty days, then holders of such preferred stock shall have an equal right with the common stock, share and share[17] alike and notwithstanding any provision in the articles to the contrary, to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent, then, after the payment of all liabilities and debts, the remainder of the assets of said corporation shall be applied first in payment in full of all stock preferred as to principal and unpaid dividends due thereon,[18] and the balance divided among the holders of the other classes of stock, as their interests may appear. The certificates of preferred stock having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets[19] of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preference given to the holders of such shares.

Dissolution.

For corresponding provision of Act 232 of 1903, see Appendix B (9050).

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 2, PART II

§284. Non-liability of Preferred Stockholders.

15. This immunity clause adds little or nothing to the security of preferred stockholders. Without it their rights and liabilities would be the same. They are liable for labor debts. They are liable for unpaid subscriptions—their own debts. They are liable for dividends paid out of capital, as distinguished from surplus. American Steel & Wire Co. v. Eddy, 130 Mich. 266 (1902); Knight v. Alamo Mfg. Co., 190 Mich. 223, 226 (1916).

16. For voting rights of preferred stock, see §§272, 281.

§285. Share and Share Alike.

17. This expression means "equally." Alexander on Wills, §871, p. 1276. As used here it means equally pro rata their shares. In other words, each share, whether common or preferred, has one vote.

§286. Unpaid Dividends Due.

18. Aside from their statutory and contractual rights—expressed in the statutes, articles, by-laws and stock certificates—preferred stockholders are upon no different footing than the holders of common stock. 6 Fletcher Cyc. Corp. §3632, p. 6026. They are not creditors. Lockhard v. Van Alstyne, 31 Mich. 75, 78 (1875). After payment of the creditors, the holders of stock preferred as to principal are entitled to receive the par value of their shares. They are also entitled to receive "in full unpaid dividends due thereon." Assuming these dividends to be

cumulative, and that they have been unpaid for a period of years, this serious question arises: Are these accumulated dividends to be paid from capital? If so, the investment of the common stockholders may be wiped out in the process. No Michigan decision is found touching this point. The answer must be found in the construction of the statute. 5 Thomp. Corp. (2 ed.) §6590, p. 1385.

Use of the word "dividends" implies payment from surplus profits. Dividends are payable from nothing else, and they cannot be due, in the sense of becoming collectible, until there are surplus profits from which they may be paid.

A similar provision was construed in the case of Spencer v. Smith, 201 Fed. 647 (1912). There the language of a preferred stock certificate was that, "In the event of dissolution of the corporation, or a distribution of its assets, the preferred stock outstanding at that time shall first be paid at eleven dollars per share, *plus all* accumulated unpaid dividends, and the remainder of the corporate assets shall be divided ratably among the holders of common stock." Of this Mr. Circuit Judge Carland, with concurrance of Mr. Circuit Judge Sanborn and Mr. District Judge Munger, said: "As the corporation made no profits, the present holders of preferred stock have no claim for dividends."

§287. Participation in Surplus.

19. Under this act, unless otherwise provided, the preferred stock is "paid in full," as to principal, when it is paid out at par. Its rights are extinguished when its par value and dividends have been paid. This may leave a large surplus to the holders of common stock. If the preferred stock is to participate in this surplus the certificate should so provide. No doubt a proper provision in the articles or by-laws would serve the same purpose if relied

upon by the preferred stockholder. 6 Fletcher Cyc. Corp. §3632, pp. 6028, 6029.

PART II, CHAPTER 2, SECTION 5

§288. Preferred Stock—Creation After Organization.

Amendment of Articles.

Every corporation organized or existing under the provisions of this act may by vote of two-thirds [20] in interest of its capital stock amend its articles of association to provide for the issuance of preferred and common stock, in accordance with this chapter, in the manner provided by section nine of chapter one of this part.[21]

For corresponding provision of Act 232 of 1903, see Appendix B (9050).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART II

§289. Creation of Preferred Stock.

20. This provision closely follows §35 of Act 232 of 1903, 2 C. L. 1915, §9050, except that a vote of two-thirds (formerly three-fourths) of the capital stock outstanding is now sufficient. Foote v. Greilick, 166 Mich. 642 (1911). The creation of preferred stock is frequently accomplished by means of an amendment increasing the capital stock to the extent of the preferred shares. Continental Varnish & Paint Co. v. Secretary of State, 128 Mich. 621 (1901). The total preferred stock cannot exceed two-thirds of the total authorized capital *inclusive* of such increase. (§264.)

21. Section 9 of Chapter 1, Part II, relates to amendment of articles. (§244.)

Amendment to the Statute

§288. Preferred Stock—Creation After Organization.

SECTION 5. Every corporation organized or existing under the provisions of this act may by vote of two-thirds [20] in interest of *its voting* capital stock amend its articles of association to provide for the issuance of preferred and common stock, *with or without par value,* in accordance with this chapter in the manner provided by section nine of chapter one of this part. [21]

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 363, effective August 27, '25, as amended by P. A. '27, Act No. 335, effective September 5, '27.

Amendment to the Statute

§290. Non-Par Stock.

SECTION 6. Any stock corporation organized for pecuniary profit may provide in the articles, *or amendments thereto*, for the issuance of shares of stock of such corporation, * * *[a] without any nominal or par value, [22] as herein provided. In respect of such shares the articles shall state:

(*a*) The total number of such shares that may be issued by the corporation, the classification thereof, and the basis of such classification, with the number of such shares authorized in each class;

(*b*) The voting powers, if any, which each of such classes shall possess;

(*c*) The order of priority in and the extent to which such shares shall be entitled to participate in dividends or assets of the corporation;

(*d*) The total amount of such shares subscribed and the consideration received for the same;

(*e*) The value, *if any*, placed upon each class of such shares, and at which they have been, or it is proposed they shall be, sold to the subscribers; * * *[b]

(*f*) *The price at which and the time when such shares preferred as to principal shall be redeemed;*

(*g*) Any other statements or declarations required by this act with respect to such issues. * * *[c]

a. The words omitted are: "other than preferred stock having a preference as to principal."

b. Section (f) is the same as subdivision (g) as here given with a new subdivision (f).

c. The words omitted are: "No corporation shall however, be authorized to issue shares of no par value excepting:

(a) In connection with other issues of its stock having a par value as prescribed in this act; and

(b) The value placed upon each share of such stock by the corporation for the purpose of sale to the subscribers shall be at least one dollar."[23]"

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 363, effective August 27, '25, as amended by P. A. '27, Act No. 335, effective September 5, '27.

Subdivision 2—Shares of Non-Par Value, Etc.

PART II, CHAPTER 2, SECTION 6

§290. Non-Par Stock.

Non-Par Stock.

Any stock corporation organized for pecuniary profit may provide in the articles for the issuance of shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value [22] as herein provided. In respect of such shares, the articles shall state:

(a) The total number of such shares that may be issued by the corporation, the classification thereof, and the basis of such classification, with the number of such shares authorized in each class;

(b) The voting powers, if any, which each of such classes shall possess;

(c) The order of priority in and the extent to which such shares shall be entitled to participate in dividends or assets of the corporation;

(d) The total amount of such shares subscribed, and the consideration received for the same;

(e) The value placed upon each class of such shares, and at which they have been, or it is proposed they shall be, sold to the subscribers;

(f) Any other statements or declarations required by this act with respect to such issues.

Limitation.

No corporation shall, however, be authorized to issue shares of no par value excepting:

(a) In connection with other issues of its stock having a par value as prescribed in this act; and

(b) The value placed upon each share of such stock by the corporation for the purpose of sale to the subscribers shall be at least one dollar.[23]

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 2, PART II

§291. Non-Par Shares.

22. Fundamentally, the object of non-par shares was to avoid the misleading inferences drawn by stockholders and stock purchasers from the often fictitious and arbitrary par valuation appearing in stock certificates. Where shares have no par value, the purchaser is not decoyed by the face of the certificate into reliance upon an apparent value which may prove fictitious. He is constrained to look to the actual value of the stock as expressed in terms of net assets.

The use of non-par stock obviates the necessity of placing a value upon such speculative assets as may be transferred to the company in exchange for it. This has been found convenient under revenue laws fixing burdensome taxes upon profits. For example, an inventor who finds an opportunity to sell his patent to a million dollar corporation for one-tenth of its capital stock might be wholly unable to pay the income tax which would result from valuation of his patent at $100,000 and payment of that amount in par value stock; but he may transfer his patent for non-par stock equivalent to one-tenth of the total stock of the company without fixing any valuation upon either the stock or the patent. This conforms to the truth of the situation, for the value of both is problematical, dependent upon future events which no man may accurately forecast.

For form of certificate of non-par stock, see §728.

§292. Provision in Articles Creating Non-Par Stock.

23. While the statement in the articles must necessarily conform to the special circumstances of each separate case, the general outline may be as follows:

The number of shares of non-par value stock is..... .....constituting a single class, and having, share for share, all voting powers, rights, privileges and immunities enjoyed by the common stock. Such non-par value stock shall be entitled to participate in dividends and assets of this corporation upon a basis of equality, share for share, with the common stock. The total amount of said non-par shares subscribed is.....shares, and the consideration received for the same is.....(itemize if property) of the value of..... Dollars. The value placed upon said non-par shares, and at which they have been (or are to be) sold to subscribers is.....Dollar.. per share, and the future sales may be at such greater price as shall be the fair market value of such shares in the judgment of the board of directors.

PART II, CHAPTER 2, SECTION 7

§293. Valuation Non-Par Shares.

Statement of Non-Par Shares.

In any case other than in the articles in which the law requires to be stated in any annual or other report, or in any certificate or paper, the amount of capital authorized, issued, outstanding or with which the corporation will commence business, the par value of shares, or the amount of the subscriptions of the incorporators thereof, there shall be stated in respect of such nominal or non par value shares, the number of such shares authorized, issued, outstanding or with which the corporation will commence business that such shares are without par value, or the number of such shares subscribed for by the incorporators, as the case may be: *Provided, however,* That whenever such corporation shall

Value of Non-Par Stock.

Sale or Payment.

have fixed the value of such shares for the purpose of sale or the payment of dividends thereon or for the exchange of other stock, or for any other purpose, the highest value so placed thereon within the period of one year shall be stated in lieu of the requirement as to the par value.[24]

COMMENTARIES ON THE SEVENTH SECTION CHAPTER 2, PART II

§294. Value Fixed Upon Non-Par Shares.

24. The state reserves the right to value non-par shares at the highest value placed thereon by the corporation, for any purpose, within a period of one year. This right will be exercised in relation to organization fees, privilege fees and taxation. See Detroit Mortgage Corporation v. Secretary of State, 211 Mich. 320 (1920).

PART II, CHAPTER 2, SECTION 8

§295. Non-Par Stock—Votes, Certificates.

Voting Rights.

Each share of such stock without nominal or par value shall have such voting powers as may be determined upon by the corporation and shall be equal to every other share of such stock subject to the preference given to preferred stock if any authorized to be issued. Every stock certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares.[25]

Amendment to the Statute

§296. Non-Par Stock—Sale of Shares.

SECTION 9. Such corporation may issue * * *[a] its authorized non-par value shares from time to time for such consideration as may be prescribed in the articles of incorporation, or for such consideration as shall be the fair market value of such shares, and, in the absence of fraud [26] in the transaction, the judgment of the board of directors as to such value shall be conclusive as to creditors and stockholders; or, for such consideration as shall be consented to by the holders of two-thirds of each class of shares then outstanding, at *any annual* meeting *or at a special meeting* called for that purpose in such manner as shall be prescribed in the by-laws. Any and all shares issued as permitted in this subdivision shall be deemed fully paid and non-assessable [27] and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: *Provided*, That nothing in this subdivision contained shall be construed as relieving or exempting any such corporation or the holders of any such shares or any other person or persons from complying with the provisions of act number forty-six of the Public Acts of nineteen hundred fiteen, known as the "Securities Act," and the Michigan Securities Commission may regulate the price at which any stock may be sold within the State of Michigan.

a. The words omitted are: "and may sell."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 2, PART II

25. For form of non-par stock certificate, see §728.

PART II, CHAPTER 2, SECTION 9

§296. Non-Par Stock—Sale of Shares.

Selling Price of Non-Par Stock.

Such corporation may issue and may sell its authorized non-par value shares from time to time, for such consideration as may be prescribed in the articles of incorporation, or for such consideration as shall be the fair market value of such shares, and, in the absence of fraud [26] in the transaction, the judgment of the board of directors as to such value shall be conclusive as to creditors and stockholders; or, for such consideration as shall be consented to by the holders of two-thirds of each class of shares then outstanding, at a meeting called for that purpose in such manner as shall be prescribed in the by-laws. Any and all shares issued as permitted in this subdivision shall be deemed fully paid and non-assessable [27] and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: *Provided,* That nothing in this subdivision contained shall be construed as relieving or exempting any such corporation or the holders of any such shares or any other person or persons from complying with the provisions of act number forty-six Public Acts of nineteen hundred fifteen, known as the "Securities Act," and the Michigan Securities Commission may regulate the price at which any stock may be sold within the State of Michigan.

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 2, PART II

§297. Fraud.

26. Fraud cannot be presumed from mere suspicion, nor from facts and circumstances which are entirely consistent with an honest purpose. Island Mill Lumber Co. v. City of Alpena, 176 Mich. 575, 579 (1913); Henneberger v. Matter, 88 Mich. 396, 704 (1891). But the presumption of good faith does not prevail where it is obviously contradicted by the acts of the parties. Schripps v. Sweeney, 160 Mich. 148 (1910).

§298. Inadequacy of Consideration.

When it is so gross as to shock the moral sense, inadequacy of consideration is evidence of fraud. German Corporation v. Negaunee German Aid Society, 172 Mich. 650, 659 (1912); Torrey v. Toledo Portland Cement Co., 158 Mich. 348 (1909).

§299. False Representations.

Ignorantly or recklessly made false representations are evidence of bad faith. Bartholomew v. Walsh, 191 Mich. 252, 259 (1916); Holcomb v. Noble, 69 Mich. 396, 399 (1888); Beebe v. Knapp, 28 Mich. 53, 74 (1873); Starkweather v. Benjamin, 32 Mich. 305 (1875); Webster v. Bailey, 31 Mich. 36, 42 (1875); Steinbach v. Hill, 25 Mich. 78, 79 (1872); Baughman v. Gould, 45 Mich. 481, 483 (1881); Converse v. Blumrich, 14 Mich. 108, 123 (1866); Power Specialty Co. v. Michigan Power Co., 190 Mich. 699, 718 (1916); Ver Wys v. Vander Mey, 206 Mich. 499 (1919).

One who has perpetrated a fraud can have no advantage

of the fact that, if his victim had exercised greater caution, no deception would have occurred. Boston Piano & Music Co. v. Pontiac Clothing Co., 199 Mich. 141, 146 (1917); John Schweyer & Co. v. Mellon, 196 Mich. 590, 597 (1917); Johnson v. Campbell, 199 Mich. 186, 191 (1917).

§300. Promissory Statements.

Promissory statements concerning future acts or events are not false representations, even though they eventually prove to be unperformed contracts or unreliable predictions. Boston Piano & Music Co. v. Pontiac Clothing Co., 199 Mich. 141, 147 (1917); Flint v. LeHeup, 199 Mich. 41, 44 (1917).

§301. Expression of Opinion.

An expression of opinion, if given and received as nothing more, is not a false representation. But if made and relied upon as a statement of existing fact, the rule is otherwise. Burtch v. Child, Hulswit Co., 207 Mich. 205, 211 (1919); Hubbard v. Oliver, 173 Mich. 337, 349 (1912); Painter v. Lebanon Land Co., 164 Mich. 260, 264 (1910). Thus, while a seller may praise his property and express his opinion of its value, the privilege does not extend to false statements of value which were, and were intended to be, relied upon by the purchaser. Pratt v. Allegan Circuit Judge, 177 Mich. 558, 562 (1913). This rule applies with peculiar force where the representations of value or condition have been made to prevent independent investigation. Face v. Hall, 177 Mich. 495, 499 (1913); Hammer v. Martin, 205 Mich. 359, 365 (1919).

§302. Statements of Value of Assets.

A statement of the value of assets of a corporation by one who is its founder and manager is not a matter of

opinion. Hubbard v. Oliver, 173 Mich. 337, 349 (1912). Nor is the statement of a secretary of a building and loan association touching economies to be effected by borrowing from his association. Stoddard v. Saginaw Building & Loan Association, 138 Mich. 73 (1904). See also Coulter v. Minion, 139 Mich, 200 (1905); Moon v. McKinstry, 107 Mich. 668 (1895); Nowlin v. Snow, 40 Mich. 699, 701 (1879); Picard v. McCormick, 11 Mich. 68 (1862).

§303. Suppression of Facts.

Fraud may be accomplished by suppression of facts. Face v. Hall, 177 Mich. 495, 499 (1913).

Where representations were false in fact, it is immaterial that the person who made them believed them to be true. Hall v. Duplex Power Car Co., 168 Mich. 634, 641 (1912); Krause v. Cook, 144 Mich. 365, 367 (1906).

§304. False Statements of Assets.

False statements to commercial agencies, or to the secretary of state, are presumed to have been made as a basis for credit. Corporate officers, as well as the company, making such statements are liable for the fraud to persons injured thereby. Dime Savings Bank v. Fletcher, 158 Mich. 162, 168 (1909); Emerson v. Detroit Steel & Spring Co., 100 Mich. 127 (1894); Selberman v. Munroe, 104 Mich. 352, 354 (1895); Mooney v. Davis, 75 Mich. 188 (1889); Genesee County Savings Bank v. Michigan Barge Co., 52 Mich. 164, 169 (1883); Ver Wys v. Vander Mey, 206 Mich. 499 (1919).

§305. Diligence.

A defrauded party does not owe to the party who defrauds him an obligation to use diligence to discover the

fraud. Yanelli v. Littlejohn, 172 Mich. 91, 104 (1912); Lewis v. Jacobs, 153 Mich. 664, 666 (1908); Smith v. Werkheiser, 152 Mich. 177, 180 (1908); Smith v. McDonald, 139 Mich. 225, 229 (1905). But, when the fraud has been discovered, prompt action should be taken or remedies may be lost. St. Johns Mfg. Co. v. Munger, 106 Mich. 90, 91 (1895).

Where stock was represented to be *treasury stock*, and stock equally valuable, but not treasury stock, was delivered, it was held that there was no injury to the purchaser, and consequently that no action for deceit would lie. Findlater v. Dorland, 152 Mich. 301 (1908). But such a transaction might afford ground for rescinding the purchase. Hamilton v. American Hulled Bean Co., 143 Mich. 277 (1906). See also Chatfield v. Sintz-Wallin Co., 182 Mich. 689 (1914).

§306. Proof.

Fraud is to be proved, like other facts, by evidence which satisfies the mind. Krolik v. Lang, 187 Mich. 286, 294 (1915). Where fraud is alleged, a wide range of examination is allowed. J. B. Millet Co. v. Andrews, 175 Mich. 350, 361 (1913).

§307. Actionable Fraud.

"The essential elements of actionable fraud are said to be:

(1) That the defendant made a material representation;
(2) that it was false;
(3) that when he made it he knew that it was false, or made it recklessly without any knowledge of its truth, and as a positive assertion;
(4) that he made it with the intention that it should be acted upon by plaintiff;

(5) that plaintiff acted in reliance upon it; and
(6) that he thereby suffered injury." Mr. Justice Brooke in Frolich v. Deacon, 181 Mich. 255, 256 (1914).

§308. The Decree.

The decree in a case where stockholders are held liable upon stock fictitiously paid up in property taken at a fraudulent overvaluation, may determine:

(a) "What creditors, if any, are entitled to participate;"
(b) "What persons are liable to account;"
(c) "The amount required to liquidate the claims of those entitled to participate;"
(d) The amount payable by each stockholder found liable;
(e) The amount payable to each creditor found entitled to participate. Courtney v. Youngs, 202 Mich. 384, 394 (1918).

§309. Fully-Paid, Non-Assessable Shares.

27. Certain it is that no statutory provision is effective to grant immunity from the constitutional liability of stockholders of all classes, for labor debts. The holder of non-par stock fully and fairly paid up has this, but no other, liability as a stockholder. In this his situation is not different from that of other stockholders.

As a general proposition, recitals in a stock certificate are binding between the corporation and its stockholders, but not as to creditors. Upton v. Tribilcock, 91 U. S. 45, 23 L. ed. 203. "Such certificates, in the absence of some rule to the contrary, stand upon the same basis as commercial paper." Lufkin Rule Co. v. Secretary of State, 163 Mich. 30, 33 (1910); Rough v. Breitung, 117 Mich.

Amendment to the Statute

§310. Amendment of Articles Changing Capital Stock.

SECTION 10. The amount of capital stock and the number of shares of every corporation may be increased or diminished [28] at any Annual meeting of the stockholders or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which the increases of capital shall be subscribed and paid for by the stockholders, but not less than par, [29] excepting in the case of stock having no nominal or par value, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell at not less than the price so fixed *all or* any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription to their proportionate shares thereof, *unless such privilege has been waived by the stockholders as in this act provided;* and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish [30] its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and the secretary shall make a certificate thereof, which shall be signed by them and filed, as an amendment to the articles as provided herein for filing the original articles, and such increase or diminution shall commence and be operative from the date when such certificate is filed in the office of the Secretary of State: *Provided*, That in order to entitle such certificate to be filed it must show what amount of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total subscribed capital has been actually paid in.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

48. *Bona fide* transferees for value take shares free from liability for assessments when the certificates, upon their face, purport to be for shares fully paid and non-assessable. Young v. Erie Iron Co., 65 Mich. 111, 127 (1887); Austin v. Hayden, 171 Mich. 38 (1912). But the original subscribers may be held liable. McBryan v. Universal Elevator Co., 130 Mich. 111, 123 (1902); Campbell v. Raven, 176 Mich. 208, 214 (1913); Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co., 170 Mich. 205, 215 (1912); Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co., 166 Mich. 618, 627 (1911).

Subdivision 3.—Increases and Decreases of Capital Stock and Calling in Subscriptions

Part II, Chapter 2, Section 10

§310. Amendment of Articles Changing Capital Stock.

Amendment to Capital Stock.

The amount of the capital stock and number of shares of every corporation may be increased or diminished[28] at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increases of capital shall be subscribed and paid for by the stockholders, but not less than par,[29] excepting in the case of stock having no nominal or par value, as well as the time and manner of the subscription and payment, and by the same vote to authorize the

Sale at Price Fixed.

board of directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish [30] its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and the secretary shall make a certificate thereof, which shall be signed by them and filed, as an amendment to the articles as provided herein for filing the original articles, and such increase or diminution shall commence and be operative from the date when such certificate is filed in the office of the Secretary of State: *Provided,* That in order to entitle such certificate to be filed it must show what amount of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total subscribed capital has been actually paid in.

For corresponding provision of Act 232 of 1903, see Appendix B (9018).

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 2, PART II

28. This section is based upon the final paragraph of 2 C. L. 1915 (9018).

For form of amendment increasing capital stock, see §§691, 692.

§311. Price of Increase Shares.

29. The stockholders are given the right to fix the price of increase shares at "not less than par." In the absence of such statutory permission, every stockholder would have the right to subscribe for increase stock, pro rata his holdings, *at par*. Hammond v. Edison Illuminating Co., 131 Mich. 79, 85 (1902). The right to subscribe to increase is an assignable right. (Id.) If the stockholder fails to exercise such right of subscription within a reasonable time, the corporation is at liberty to sell the shares to which he might have subscribed, and to retain any profit realized. (Id.) 5 Fletcher Cyc. Corp. §3465, p. 5706. One does not become a stockholder as to increase shares until he has paid for them. Id. §3461, p. 5696.

§312. De Facto Increase.

Where increase stock has been issued pursuant to a good faith, but ineffectual, effort to comply with the statute, the state alone can complain of the irregularity. Hoeft v. Kock, 123 Mich. 171 (1900).

§313. Reduction of Capital Stock.

30. The influence of legislation imposing privilege fees arbitrarily levied upon the basis of capital stock irrespective of impairment, will undoubtedly exert an influence toward reduction of unnecessary capitalization. A two-thirds vote of the capital stock outstanding may, as against a dissenting minority, accomplish such reduction. Joy v. Jackson & Michigan Plank Road Co., 11 Mich. 155, 171 (1863). Resulting surplus assets may be distributed to the stockholders, provided the company is solvent, and provided such assets are not needed or useful in its business. 4 Thomp. Corp. (2 ed.) §3670, p. 246.

Under such statutes it is held that the reduction must fall upon all stockholders alike—that all classes of stock must sustain proportionate reduction—and that any reduction violating this principle is voidable as against non-consenting stockholders. Theis v. Durr (Wis.), 1 L. R. A. (N. S.) 571, 576 (1905); 5 Fletcher Cyc. Corp. §3471, p. 5722.

For form of amendment reducing capital stock, see §693.

PART II, CHAPTER 2, SECTION 11

§314. Calls and Collection of Subscriptions.

Calls on Subscriptions. Sale of Stock.

The board of directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper by giving notice thereof, as the by-laws shall prescribe;[31] and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose,[32] or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder.[33] In case the proceeds of such sale shall be insufficient to pay

said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased. Negligent Stockholder.

For corresponding provision of Act 232 of 1903, see Appendix B (9027).

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 2, PART II

31. For form of resolution calling in subscriptions, see §704.

§315. Assumpsit.

32. Assumpsit is the proper form of action. Hoyt v. Paw Paw Grape Juice Co., 158 Mich. 619, 626 (1909). Where subscriptions are payable upon call of the board of directors, the call is a condition precedent to the right to sue. Until the call is made, payment is not due and suit brought under such circumstances would be premature. Halsey Fire Engine Co. v. Donovan, 57 Mich. 318 (1885). Dexter v. Mason Plank Road Co. v. Millard, 3 Mich. 90, 103 (1894). It is held, however, by the weight of authority that—in the absence of some provision to the contrary—subscribers are bound to take notice of calls, and while the call must be made, notice of it need not be given to the stockholder before commencement of suit. 2 Fletcher Cyc. Corp. §683, p. 1540. The remedy by sale of the delinquent stockholder's shares need not be pursued before assumpsit is brought. International Fair & Exposition Association v. Walker, 83 Mich. 386, 394 (1890).

33. If the remedy by suit be chosen, execution may be

levied upon the stockholders' shares, as provided by statute. (3 C. L. 1915, §12873 et seq.), as well as upon other property. If the remedy by sale of shares be chosen, assumpsit lies to recover any resulting deficiency. As to election of remedies, see Humiston, Keeling & Co. v. Bridgman, 195 Mich. 82, 87 (1917).

Subdivision 4.—Power to Borrow Money, Mortgage Property, and Guarantee Bonds of Other Corporations

Part II, Chapter 2, Section 12

§316. Issue of Notes, Bonds and Mortgages.

Borrowing Money.

Every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchise to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase money mortgages, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation;[34] which consent shall be given either in writing or by vote at a meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary

Corporate Mortgage.

Amendment to the Statute

§316. Issue of Notes, Bonds and Mortgages.

SECTION 12. Every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed and may mortgage its property and franchises to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase money mortgages, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation, [34]which consent shall be given either in writing, or by vote at *any annual* meeting *or a special meeting* of the stockholders called for that purpose, and upon the same notice as that required for annual meetings of the corporation; and the certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary of the corporation and shall be filed and recorded with the instrument: *Provided, however,* That the stockholders may in the articles or in an amendment thereto confer general authority upon the directors to mortgage the property of the corporation, in which case each such mortgage shall contain a reference to such authority. When authorized by like consent, the directors, under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof * * *[a] into stock of the corporation; [35] and if the capital stock shall not be sufficient to meet the conversion when made, the stockholders shall from time to time, authorize an increase of capital stock sufficient for that purpose in the manner hereinbefore prescribed.

a. The words omitted are: "after two and not more than twelve years from the date of such bonds."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

or an assistant secretary of the corporation and shall be filed and recorded with the instrument. *Provided, however,* That the stockholders may in the articles, or in an amendment thereto, confer general authority upon the directors to mortgage the property of the corporation, in which case each such mortgage shall contain a reference to such authority. When authorized by like consent, the directors, under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation;[35] and if the capital stock shall not be sufficient to meet the conversion when made, the stockholders shall, from time to time, authorize an increase of capital stock sufficient for that purpose in the manner hereinbefore prescribed.

Certificate Recorded.

Conversion.

(The foregoing is as amended by P. A. '21, First Extra Session, Act No. 20.)

COMMENTARIES ON THE TWELFTH SECTION OF CHAPTER 2, PART II

§317. Consent of Stockholders to Mortgages.

34. Prior to the passage of this act, it had been repeatedly held that the board of directors, without action by the stockholders, might mortgage the corporation's property to secure pre-existing indebtedness. Osborn v. Detroit Kraut Co., 193 Mich. 664, 672 (1916); Turney v. Combination Brick Co., 184 Mich. 439, 445 (1915); Freeman v. Mitchell, 206 Mich. 380, 401 (1919); Marine Savings Bank v. Norton, 160 Mich. 614 (1910). Except in the

single case of purchase price mortgages, the rule now seems to be changed, unless general authority to mortgage is conferred upon the board by a provision of the articles; but there is little doubt that a directors' mortgage given and received in good faith for funds retained by the corporation would be sustained upon principles of waiver, ratification and estopple. "Statutes requiring the assent of stockholders to the execution of mortgages on corporate property are not unbending." 3 Thomp. Corp. (2 ed.) §2565, p. 465; 3 Cook Corp. (7 ed.) §808, p. 3015; G. V. B. Mining Co. v. First National Bank of Hailey, 95 Fed. 23 (1899). Speaking of a similar statute, Mr. Justice Cooley said: "The statute now under consideration was passed to protect the interests of stockholders in mining companies. It intends that their mining property shall not be conveyed away or mortgaged, except by their deliberate action after they have been notified of a proposal so to do, and have had time to deliberate upon and fully consider it. But the matter does not concern the public at large; no principle of public policy is at stake; no wrong, direct or indirect, is done to any human being if conveyance is made or mortgage given without the exact notice required, unless it is a wrong to the stockholders themselves. And as others are not concerned, why should the statute give them (i. e., others) the right to raise questions of regularity which the stockholders elect to waive? We are satisfied such was not its purpose." Beecher v. Marquette & Pacific Rolling Mill Co., 45 Mich. 103, 109 (1881); West Michigan Park Ass'n v. Pere Marquette R. Co., 172 Mich. 179, 189 (1912). The directors are the agents of the stockholders and the unauthorized mortgage of the directors may be ratified by such acts or conduct as would ratify the acts of other agents.

If the stockholders remain silent and receive the benefits of the unauthorized loan, they are estopped to question the

Amendment to the Statute

§319. Guaranty of Bonds of Subsidiary Company.

SECTION 13. Any stock corporation lawfully owning * * *[a] *two-thirds of the* capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders, voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such a corporation, stating the time and place and object of the meeting and served upon stockholders appearing as such upon the books of the corporation personally, or by mail at his last known postoffice address, at least twenty days prior to such meeting, guarantee the bonds of such other corporation. [86]

a. The word omitted is: "entire."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

validity of the mortgage by means of which the loan was procured. 1 Jones Mortgages (7 ed.) §127, p. 181. As between original parties having knowledge of the facts, the purpose for which directors have affixed their names to corporate paper may be shown by parol. Lexington State Bank v. Rose City Creamery Co., 207 Mich. 81 (1920).

§318. Conversion Privileges.

35. Under this statute, the holder of corporate bonds may be given two privileges, instead of one: (a) the privilege of payment in cash, and (b) the privilege of payment in stock—at his option. The purpose of course is to enhance the attractiveness of the bonds. The provision is new in this state, although the same result was possible before, as a matter of contract.

PART II, CHAPTER 2, SECTION 13

§319. Guaranty of Bonds of Subsidiary Company.

Guaranty of Bonds.

Any stock corporation lawfully owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders, voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last known postoffice address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.[36]

COMMENTARIES ON THE THIRTEENTH SECTION OF CHAPTER 2, PART II

§320. Power to Guarantee Bonds of Subsidiary Corporation.

36. It is a well settled general rule that, in the absence of express authority, a corporation has no power to become a guarantor, except in furtherance of its own business. 2 Fletcher Cyc. Corp. §924, p. 1869; Knickerbocker v. Wilcox, 83 Mich. 200, 207 (1890). Where a brewing company became surety upon an indemnity bond given in furtherance of its business, it was said that, "Under the well settled rule the defendant (brewing company) had implied power to do those things necessary and helpful to the conduct of its authorized business." Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 373 (1910); Duluth, South Shore & Atlantic R. Co. v. Wilson, 200 Mich. 313, 323 (1918); Constantine v. Kalamazoo Beet Sugar Co., 132 Mich. 480 (1903); Gratiot County Supervisors v. Munson, 157 Mich. 505, 509 (1909). See also McBroom v. Cheboygan Brewing & Malting Co., 162 Mich. 323 (1910).

Where power to guaranty bonds of another corporation is conferred by statute, the method prescribed for invoking exercise of the power is "a mere regulation," and a bona fide purchaser of such bonds may enforce the guaranty, even though it was not authorized by the stockholders. 3 Thomp. Corp. (2 ed.) §2295, p. 220.

Subdivision 5—Industrial Stock and Welfare

PART II, CHAPTER 2, SECTION 14

§321. Employees' Stock.

Employees' Stock.

Any corporation having capital stock and organized for pecuniary gain may sell any portion

Amendment to the Statute

§321. Employees Stock.

SECTION 14. Any corporation having capital stock and organized for pecuniary gain may sell any portion of its stock, not otherwise subscribed, to its employes upon consideration of such faithful or continued employment as may be fixed by * * *[a] *said corporation;* and such consideration of faithful or continued service in the employment of the company on the part of such employes shall be deemed valid and effectual to pass the title to such shares of stock. Such stock may be sold to such employes upon contract retaining title thereto and withholding the voting privileges thereof until such consideration shall have been fully executed and upon *such* other terms and conditions as the corporation may prescribe. Such stock may have such preference and voting powers as the corporation may declare and shall be known as "industrial stock." [87] Every such corporation may increase its capital stock for the purpose of providing for such industrial shares to an amount not exceeding ten per cent of its total authorized capital, without being required to have property or other assets to liquidate the same at the time of such authorization, but every such corporation, so issuing industrial stock, shall set aside a reserve fund from year to year sufficient to retire any such industrial stock at its par value at maturity, if preferred as to principal, or to equal the liability of the corporation to such stockholders in the case of other stock being so issued.

a. The words omitted are: "voting stockholders."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 335, effective September 5, '27.

Sale to Employes.

of its stock, not otherwise subscribed, to its employes upon consideration of such faithful or continued employment as may be fixed by the voting stockholders; and such consideration of faithful or continued service in the employment of the company on the part of such employes shall be deemed valid and effectual to pass the title to such shares of stock. Such stock may be sold to such employes upon contract retaining title thereto and withholding the voting privileges thereof until such consideration shall have been fully executed and upon other terms and conditions as the corporation may prescribe. Such stock may have such preference and voting powers as the corporation may declare, and shall be known as "industrial stock."[37] Any such corporation may increase its capital stock for the purpose of providing for such industrial shares to any amount not exceeding ten per cent of its total authorized capital, without being required to have property or other assets to liquidate the same at the time of such authorization, but every such corporation, so issuing industrial stock, shall set aside a reserve fund from year to year sufficient to retire any such industrial stock at its par value at maturity, if preferred as to principal, or to equal the liability of the corporation to such stockholders in the case of other stock being so issued.

Industrial Shares.

COMMENTARIES ON THE FOURTEENTH SECTION OF CHAPTER 2, PART II

§322. Industrial Stock.

37. This provision is new. In Lufkin Rule Co. v. Secretary of State, 163 Mich. 30 (1910), an attempt to create

stock of the same general character, under Act 232 of 1903, was held unauthorized and "against public policy as (then) embodied in our statutes."

PART II, CHAPTER 2, SECTION 15

§323. Industrial Stock Certificates.

Credit Certificates.

Every corporation authorizing the issuance of such industrial stock shall issue a credit certificate to each person entitled to any portion of the stock, showing the number of shares, the par, or in the case of shares without par value, the assumed value thereof, the preferences, if any, and the conditions upon which and the consideration for which such shares will be issued to the holder of such certificate. Such certificate shall not be assignable or transferable, but any right to the delivery of such shares may be assigned or transferred at maturity of the contract under such rules and regulations as the corporation may enact with respect thereto. Every such corporation shall keep a record of every such certificate, showing the number thereof, the name of the holder, the number of shares so contracted for, and the date of maturity as near as can be estimated and the amount in credits required to complete the purchase. Upon such record shall be entered every credit accruing to the holder thereof, and the holder of any such certificate shall have the right to inspect any such record at reasonable times, and to have its credits entered upon his certificates as they accrue. Such certificate, when matured, shall be exchanged for a stock certificate upon presentation to the proper officers of such corporation in the same manner as other shares of stock of such corporation are

Stock Certificates.

issued. Such shares when issued shall be transferable and deemed fully paid to the same extent as any class of stock such corporation may be authorized to issue.[38]

COMMENTARIES ON THE FIFTEENTH SECTION OF CHAPTER 2, PART II

§324. Form of Credit Certificate.

38.

No.....	Date	Amt.	Entered by
.....Company THIS IS TO CERTIFY THAT ....., in consideration of faithful and continued services to be rendered to this company, is entitled to have entered hereon, quarterly, on the first day of each January, April, July and October hereafter while in the employ and service of this company, a credit of $..... until the full sum of $..... has been so credited, whereupon, on surrender of this certificate ..he shall be entitled to receive shares of the fully paid, non-assessable 7% cumulative, preferred stock of this company to an amount equalling at par value the total amount of such credits. This certificate and the credits re-			

presented thereby, shall be non-assignable and non-transferable until said full sum of $..... shall have been credited hereon as above provided. In case said holder hereof for any reason shall cease to remain in the employ of this company during said credit period, this certificate and all credits hereon shall be surrendered up to the company and shall be of no further force or effect. Dated this....day of.....19.. ..... President. ..... Secretary.	Date	Amt.	Entered by

Obviously, the forms of agreement—and consequently the forms of credit certificates—may cover a wide range. Payment may be made partly in cash and partly in credits. Accumulated dividends may be applied upon the final credit. The stock may be the ordinary common or preferred shares of the company, or it may be a special class created for the purpose. If preferred as to principal, a reserve fund sufficient for its retirement at maturity must be set aside from year to year. (§321.)

PART II, CHAPTER 2, SECTION 16

§325. Employees' Stock—Payment, Dividends.

Payment for Stock.

Any corporation authorizing the issuance of industrial stock may adopt and put into effect in connection therewith a plan whereby such stock

Forfeiture for Failure to Pay.

may be paid for partly in cash, to be paid in from time to time, and partly in credits given for continued and faithful service to such corporation, with such conditions of forfeiture for failure to fully pay for or earn such stock as may be equitable: *Provided,* That there shall be no forfeiture of any cash payments made upon such certificate. Nothing in this subdivision contained shall be construed as authorizing any such corporation to do a banking business, but such industrial stock shall, when issued, be entitled to share in such dividends as have been declared on the common stock during the period of payment therefor in the proportion that the amount credited upon the credit certificate at the time such dividends became effective as to the common stockholders bears to the face of such shares, unless such industrial stock shall be issued with a preference as to principal in which case the dividends shall be at such rate as shall have been stipulated in the credit certificate and shall be cumulative or not as the corporation may authorize.[39]

COMMENTARIES ON THE SIXTEENTH SECTION OF CHAPTER 2, PART II

§326. Participation in Dividends.

39. The right to participate in dividends in proportion to investment during the credit period, or upon the basis of a specified preference, is determined by the statute, but such dividends are not payable until the stock has been earned (or earned and paid for) and issued. No doubt such dividends will be payable when issue of the stock becomes demandable.

It is not necessary that the provision as to participation in dividends be incorporated in the credit certificate, as the statute forms a part of the contract and expresses the rights and obligations of the parties in this respect.

PART II, CHAPTER 2, SECTION 17

§327. Welfare Work for Employes.

Welfare Work.

Any such corporation may, by the consent of two-thirds of the capital stock, authorize the expenditure of not to exceed ten per cent per annum of the surplus capital thereof for the purpose of providing for the social, moral, physical or educational welfare of its employes, including relief work among the families of such employes, the establishment of suitable club-rooms, schools, entertainment, gymnasiums, athletic grounds, lecture courses and medical attendance not otherwise required by law, and all such sums of money, so devoted to the betterment of the employes shall be deemed legitimate expenses of the corporations: *Provided,* That with the consent of all of the capital stock, such amount may be increased to twenty-five per cent of such surplus in any one year.[40]

COMMENTARIES ON THE SEVENTEENTH SECTION OF CHAPTER 2, PART II

§328. Application of Surplus to Welfare.

40. This provision is new. Its practicability is suggested by the facts and law in the case of Dodge v. Ford Motor Co., 204 Mich. 459, 506, 507 (1919). The propriety of limitations is likewise indicated by that case. There Mr.

Justice Ostrander said: "A business corporation is carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes." However, it is now possible for a two-thirds majority of the stockholders to bind an unwilling minority to welfare work "not exceeding 10% per annum of the surplus capital."

CHAPTER 3

LIABILITY OF DIRECTORS, STOCKHOLDERS, ETC., FOR DEBTS OF AND DUE THE CORPORATION

(References are to annotator's sections)

§329. Liability for Payment of Dividends from Capital Stock.
§330. Liability of Stockholders for Capital Assets.
§331. Liability for Payment of Dividends in Insolvency.
§332. Directors' Liability for Payment of Unearned Dividend.
§333. Equity May Compel Payment of Earned Dividends.
§333a. Stock Dividends.
§334. Demand upon Directors.
§335. Liability of Directors for Violation of Act.
§336. Liability of Directors for Violation of Act.
§337. Directors Ordering or Assenting to Violation.
§338. Restraint of Mismanagement.
§339. Transfers and Liens.
§340. Transfers of Stock.
§341. Lien of Corporation for Debts of Stockholders.
§342. Foreclosure of Lien.
§343. Notice of Claim of Lien.
§344. Transfer of Stock on Foreclosure Sale.
§345. Lien—Sale of Equity or Redemption.
§346. Sale of Equity of Stockholders for Debt Arising After Pledge.
§347. Recovery of Deficiency.
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§350. Labor Debts—Enforcement.
§351. Suits for Labor Debts.
§352. Conditions Precedent.
§353. Declaration Against Stockholders.
§354. Contribution Among Stockholders.
§355. Assignees of Labor Claims.
§356. Remedies Provided by Judicature Act.

PART II, CHAPTER 3, SECTION 1

§329. Liability for Payment of Dividends from Capital Stock.

Refund of Capital.

If the capital stock of any corporation shall be withdrawn, and refunded to the stockholders

Liability Stockholders.

before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.[1]

For corresponding provision of Act 232 of 1903, see Appendix B (9037).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 3, PART II

§330. Liability of Stockholders for Capital Assets.

1. This section re-enacts §21 of Act 232 of 1903, 2 C. L 1915 (9037) without change. The right to recover dividends paid out of, and to the impairment of, capital stock. required no statutory declaration. The right existed at common law. Detroit Trust Co. v. Goodrich, 175 Mich 168, 173 (1913). It is no defense that the stockholders have acted in good faith. (Id.) While the trust fund doctrine is sometimes invoked as the basis of the liability —i. e. that the capital stock of a corporation is a trust fund for the benefit of its creditors, and may be followed as such—the liability may be rested upon the simpler ground, that the illegal giving away of a corporation's capital assets is a fraud upon creditors. Grand Rapids Trust Co. v. Nichols, 199 Mich. 126, 132 (1917). The liability of stockholders may be enforced for the benefit of creditors whose claims have arisen either before, or *after* the unlawful distribution. Clark v. E. C. Clark Machine Co., 151 Mich. 416, 424 (1908). And the liability extends to holders of all classes of stock to whom dividends have been paid from capital stock. American Steel & Wire Co. v.

Eddy, 130 Mich. 267 (1902). See also McIntyre v. E. Bement's Sons, 146 Mich. 74, 78 (1906). The right of action is barred in six years after the date of payment. Detroit Trust Co. v. Goodrich, ante.

PART II, CHAPTER 3, SECTION 2

§331. Liability for Payment of Dividends in Insolvency.

Unearned Dividends.

If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto, shall be jointly and severally liable in an action founded on this statute, for all debts from such corporation at the time of paying or declaring such dividend.[2]

For corresponding provision of Act 232 of 1903, see Appendix B (9038).

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 3, PART II

§332. Directors' Liability for Payment of Unearned Dividend.

2. This section reenacts §22 of Act 232 of 1903, 2 C. L. 1915 (9038), with one immaterial change: the words "all debts from such corporation," near the end of the section, formerly read "all debts *due*," etc. The meaning is unchanged. The word "due" merely signified "remaining unpaid." Fowler v. Hoffman, 31 Mich. 214, 219 (1875).

The statute is founded upon the principle stated by Mr.

Justice Cooley in Lockhart v. Van Alstyne, 31 Mich. 75, 79 (1875): "The declaration of a dividend is a most emphatic assertion that the corporation is in condition to make a division of profits, and is consequently enjoying some degree of prosperity. So generally is this understood that the making of a dividend when the capital must be encroached upon for the purpose, is looked upon as highly discreditable, if not absolutely dishonest and fraudulent, as involving an assertion of prosperity which, under the circumstances, would be deceptive, and tending to give the corporation a credit to which it is not entitled." The remarks of Mr. Justice Fellows in Grand Rapids Trust Co. v. Nichols, 199 Mich. 126, 132 (1917), are expressive of another phase of the fundamental principle, namely, that the giving away of the capital assets of a corporation is a fraud upon creditors.

§333. Equity May Compel Payment of Earned Dividends.

"Courts of equity will not interfere in the management of the directors, unless it is clearly made to appear that they are guilty of fraud or misappropriation of the corporate funds, or refuse to declare a dividend when the corporation has a surplus of net profits which it can, without detriment to its business, divide among the stockholders, and when a refusal so to do would amount to such an abuse of discretion as would constitute a fraud, or breach of that good faith which they are bound to exercise toward the stockholders." Hunter v. Roberts, Throp & Co., 83 Mich. 63, 71 (1890); Cicotte v. Anciaux, 53 Mich. 227, 235 (1884); Dodge v. Ford Motor Co., 204 Mich. 459, 507 (1919).

§333a. Stock Dividends.

A stock dividend is a mere conversion of surplus into

capital by means of distribution of additional shares to the stockholders pro rata their respective holdings. The transaction neither reduces the assets of the corporation, nor increases the value of the total stock ultimately held by the stockholders.

The corporation code makes no express provision for stock dividends, neither does it prohibit them. The directors of a corporation having unissued, authorized capital stock may, in the exercise of good faith, issue such stock against actual surplus and distribute it to the stockholders, in whose hands it will be full paid and non-assessable.
6 Fletcher Cys. Corp. §3682, p. 6124.

"Such a dividend is not in any sense a distribution of *capital* stock of the corporation among the stockholders, so long as the amount issued does not exceed the amount of the profits out of which it is lawful to declare a dividend." Marshall Corp. p. 336.

Nor is a stock dividend an issue of stock for property: the property by which the dividend is measured is already vested in the corporation, and the dividend is declared upon the strength of that fact (see §§197, 277).

§334. Demand upon Directors.

It is a general principle, that in all actions to compel directors to perform a duty, *demand* that they perform it is a necessary condition precedent (Horning v. Louis Peters & Co., 202 Mich. 140, 151 (1918); Talbot v. Scripps, 31 Mich. 268 (1875); Chapin v. Citizens Telephone Co., 196 Mich. 331, 335 (1917); Robinson v. De Luxe Motor Car Co., 170 Mich. 163, 166 (1912), unless the directors themselves are offenders, in which case demand is excused, because it would be an idle ceremony to ask them to commence proceedings against themselves. Sant v. Parronville Shingle Co., 179 Mich. 42, 57 (1914);

Freeman v. Mitchell, 198 Mich. 207, 213 (1917); Torrey v. Toledo Portland Cement Co., 150 Mich. 86 (1907); Flynn v. Third National Bank of Detroit, 122 Mich. 642, 645 (1900); Miner v. Belle Isle Ice Co., 93 Mich. 97 (1892).

PART II, CHAPTER 3, SECTION 3

§335. Liability of Directors for Violation of Act.

Directors' Liability.

If any corporation organized under, or subject to this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation.[3] The board of directors shall exercise good faith in the conduct of the affairs of the corporation, and shall do no acts nor pay any salaries or bonuses which would tend to impair the company's business or to destroy the value of any part of its capital stock or securities; and the courts shall have full power to afford the protection provided for herein upon proper application thereto.[4]

For corresponding provision of Act 232 of 1903, see Appendix B (9039).

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 3, PART II

§336. Liability of Directors for Violation of Act.

3. This portion of Sec. 3 reenacts Sec. 23 of Act 232 of 1903, 2 C. L. 1915 (9039), without change. The remainder of the section is new.

The statute is penal (Wachusett National Bank v. Steel, 135 Mich. 688—1904) and is to be strictly construed. People v. Gansley, 191 Mich. 357, 378 (1916); Young v. Moore, 162 Mich. 60, 63 (1910). Directors of ordinary mercantile corporations are held to a less rigid rule than is applied to directors of banks. Wilcox v. Gauntlett, 200 Mich. 272 (1918).

In construing a similar statute, Mr. Justice Cooley said: "This statute, it will be perceived, only makes the directors personality liable for 'debts.' Liabilities of the company which may give rise to causes of action against it and result in judgments are not within the statute unless they constitute present debts." Lockhart v. Van Alstyne, 31 Mich. 75, 77 (1875).

§337. Directors Ordering or Assenting to Violation.

In passing upon a strikingly similar statute, Mr. Justice Mitchell, of the Supreme Court of Minnesota, expressed the following opinion: "Plaintiff's contention is that it is the duty of a director to know what is being done in corporate matters; that it is negligence for him not to know,—and therefore he is conclusively presumed to have known, and, not objecting, he must be deemed assenting. Such a construction would impose this severe statutory liability for at least every act of mere negligence for which he would be liable at common law; but, as the act is highly penal, we do not think it ought to receive so broad a construction. The language of the various sections all tends to indicate that the legislature intended that something more than mere negligence would be necessary to subject a person to those heavy penalties,—something amounting to wilful, or at least intentional, violation of legal duty, either ordering the act done, participating in doing it, or

assenting to its being done with knowledge that it was being, or about to be, done."

"This assent, however, need not be express. If a director knew that a violation of law was being, or about to be, committed, and made no objection when duty required him to object, and when he had the opportunity of doing so, this would amount to 'assent.'" Patterson v. Minnesota Mfg. Co., 41 Minn. 84, 4 L. R. A. 745, 751 (1889).

§338. Restraint of Mismanagement.

4. This provision is new. In the original bill, the words "which are calculated to impair"—indicating deliberate intent to impair—were used instead of the words "which would tend to impair." From this it may be reasoned that the legislature proposed to enable restraint of conduct inevitably leading toward impairment, whether that consequence was intended or not. The clearly forseeable destructive result, and not the intent of the directors, justifies the interposition of equity.

A threatened act forbidden by the statute may be enjoined, before its performance, at the suit of a stockholder who would suffer injury. 5 Thomp. Corp. (2 ed.) §5670, p. 496. And where such an act has been performed, the statutory liability provided in this section attaches to the directors. (§335.)

PART II, CHAPTER 3, SECTION 4

§339. Transfers and Liens.

Personal Property.

The stock of every corporation shall be deemed personal property and shall be subject to the provisions of Act No. 103 of the Public Acts of 1913, known as the uniform Stock Transfer Act, as to all matters and things therein prescribed;

Transfer of Stock.

and as to matters not therein prescribed in relation to the transfer of stock, the said corporation shall have the power to make its by-laws and other regulations.[5] Such corporation shall at all times have a lien upon all stock or property of its members invested therein, for all debts due from them to such corporation.[6]

For corresponding provision of Act 232 of 1903, see Appendix B (9032).

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 3, PART II

§340. Transfers of Stock.

5. The Uniform Stock Transfer Act is Act 106 of 1913 —not Act 103—3 C. L. 1915 (11920), et seq. It is chiefly declaratory of preexisting law.

For form of by-law as to transfers, see §§721, 722.

§341. Lien of Corporation for Debts of Stockholders.

6. The expression "debts due" is construed to mean "debts owing." 2 Cook Corp. (7 ed.) §527, p. 1545. The lien being created by statute is binding upon innocent purchasers for value. Bronson Electric Co. v. Rheubottom, 122 Mich. 608 (1900); Just v. State Savings Bank of Ionia, 132 Mich. 600 (1903). Moore v. Royal Oak Lumber & Supply Co., 171 Mich. 400, 404 (1912). And such a lien is superior to the claim of a subsequent pledgee. Brinen v. Muskegon Savings Bank, 174 Mich. 414, 418 (1913). The rule is different where the lien is created by a mere by-law. Just v. State Savings Bank of Ionia, 132 Mich. 600 (1903).

PART II, CHAPTER 3, SECTION 5

§342. Foreclosure of Lien.

Foreclosure of Lien.

Any corporation which has a lien upon the stock of any stockholder therein as provided by the preceding section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within thirty days from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder in the same manner and by the same procedure as is hereinbefore provided for the sale of the stock of a subscriber who has not paid up his subscription, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.[7]

For corresponding provision of Act 232 of 1903, see Appendix B (9040).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 3, PART II

§343. Notice of Claim of Lien.

7. If the articles or by-laws provide the method of giving notice, that method must be followed. Westcott v. Minnesota Mining Co., 23 Mich. 144, 163 (1871); Stradley v. Cargill Elevator Co., 135 Mich. 367 (1904).

For procedure see ante, §314.

The statutory method of foreclosure is to be strictly pursued. Equity has no jurisdiction in such cases, except where the foreclosure is incidental to some other right

properly requiring equitable relief. Aldine Manufacturing Co. v. Phillips, 118 Mich. 162 (1898). Then the rule applies, that, "Equity having once acquired jurisdiction, will retain it to give such full relief as will finally dispose of the controversy." Culver v. Avery, 161 Mich. 322, 332 (1910); Hamilton v. Wilcox, 167 Mich. 551, 558 (1911); Town v. Duplex Power Car Company, 172 Mich. 519, 528 (1912).

PART II, CHAPTER 3, SECTION 6

§344. Transfer of Stock on Foreclosure Sale.

Transfer of Shares.

Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to his order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights, and interests of a stockholder in such corporation.[8]

For corresponding provision of Act 232 of 1903, see Appendix B (9042).

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 3, PART II

8. Reissue of Stock to Foreclosure Purchaser. This provision reenacts §26 of Act 232 of 1903, 2 C. L. 1915 (9042).

PART II, CHAPTER 3, SECTION 7

§345. Lien—Sale of Equity of Redemption.

Sale of Equity of Redemption.

Whenever any stockholder in any such corporation shall have made a transfer or assign-

Transfer or Assignment.

ment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.[9]

For corresponding provision of Act 232 of 1903, see Appendix B (9034).

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 3, PART II

§346. Sale of Equity of Stockholders for Debt Arising After Pledge.

9. This provision reenacts §27 of Act 232 of 1903, 2 C. L. 1915 (9043). It is of course true that the earlier pledge, as well as the equity of the stockholder, may be subordinate to the rights of the corporation. In such cases, the corporation may proceed as though the pledge did not exist. This situation arises when the corporation, without notice of an existing pledge, extends credit to its stockholders. 4 Thomp. Corp. (2 ed.) §4212, p. 727.

§347. Recovery of Deficiency.

If the stockholders' interest, or "equity," fails to produce,

upon sale, sufficient to satisfy his indebtedness to the company, assumpsit lies to recover the deficiency. Carson v. Arctic Mining Co., 5 Mich. 288 (1858); Merrimac Mining Co. v. Bagley, 14 Mich. 501 (1866).

PART II, CHAPTER 3, SECTION 8

§348. Liens Unrelated to Levies.

Levies.

Nothing contained in the three preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.[10]

For corresponding provision of Act 232 of 1903, see Appendix B (9044).

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 3, PART II

§349. Levies Unaffected by Statute.

10. This is substantially a reenactment of §28 of Act 232 of 1903, 2 C. L. 1915 (9044). The provision does not mean that lien of the corporation shall be subordinate to levies. It simply means that the three preceding sections of the act are *unrelated* to the special proceedings by which third parties may levy upon stock.

PART II, CHAPTER 3, SECTION 9

§350. Labor Debts—Enforcement.

Labor Debts.

The stockholders of all corporations shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action

Prima Facie Evidence.

founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.[11] Nothing in this section contained shall be construed as taking away any of the remedies provided by the Judicature Act, so-called.[12]

For corresponding section of Act 232 of 1903, see Appendix B (9045).

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 3, PART II

§351. Suits for Labor Debts.

11. This section is a reenactment of §29 of Act 232 of 1903, 2 C. L. 1915 (9045). The term labor, as used here, refers to *manual* labor. Appeal of Clark, 100 Mich. 448 (1894); Black's Appeal, 83 Mich. 517 (1890); In re petition of James A. Sayles & Co., 92 Mich. 354 (1892); Jones v. Avery, 50 Mich. 326 (1883); Brockway v. Innis, 39 Mich. 47 (1879); Peck v. Miller, 39 Mich. 594 (1879); Beecher v. Dacy, 45 Mich. 92; Taylor v. Manwarring, 48 Mich. 171 (1882). "The law limits its protection to one

who labors, and does not extend to one who merely hires out the labor of others." Chicago and Northeastern R. Co. v. Sturgis, 44 Mich. 538, 540 (1880). Labor which is intellectual rather than manual is not within the protection of the statute. Michigan Trust Co. v. Grand Rapids Democrat, 113 Mich. 615, 617 (1897).

The liability of the stockholder is personal and arises when the labor has been performed. It cannot be escaped by means of subsequent transfer of his stock. Voight v. Dregge, 97 Mich. 322, 324 (1893); Kamp v. Wintermute, 107 Mich. 635 (1895); Macomber v. Wright, 108 Mich. 109 (1895); Foster v. Row, 120 Mich. 1, 10 (1899); Tolden v. Young, 39 Mich. 58 (1878); Powell v. Eldred, 39 Mich. 552 (1878). Thus, in the case last cited, it was held that proof that the defendant was not a stockholder at the time when the labor was performed is a complete defense. Hanson v. Donkersley, 37 Mich. 184 (1877). (See §199.)

§352. Conditions Precedent.

"An action of assumpsit may be maintained against *all* or *any* of the stockholders of any corporation or joint stock association on their individual liability, for labor performed for such corporation or association, *after* an execution shall be returned unsatisfied, in whole, or in part, *or after* an adjudication in bankrutpcy against such corporation." 3 C. L. 1915 (12749). The foregoing provision originated in the Judicature Act of 1915. See Cummins & Beecher's Michigan Judicature and Other Practice Acts (2nd ed.), same section.

While issue and return *nulla bona* of an execution (except in case of bankruptcy) is an essential condition precedent to assumpsit against stockholders, it has been held that the execution need not run to any county other than

that in which judgment has been taken, even though it may appear that the corporation has property in such other county. Ripley v. Evans, 87 Mich. 217 (1891).

Decisions under earlier statutes, holding that the corporation must be joined with the stockholders as a party defendant are inapplicable to proceedings under the present statute. Thompson v. Jewell, 43 Mich. 240 (1880).

§353. Declaration Against Stockholders.

The declaration must bring the stockholders within the limits of the field of liability; it must show the character of the labor, the time of its performance, and that the defendants were stockholders at that time. Peterson v. Tilden, 44 Mich. 168 (1880); Chicago & Northeastern R. Co. v. Sturgis, 44 Mich. 538 (1880). However, in justice court, a somewhat less exacting rule may be followed. Wineman v. Fisher, 135 Mich. 604 (1904).

§354. Contribution Among Stockholders.

Contribution is enforcible in equity and not at law. Shurlow v. Lewis, 170 Mich. 493 (1912); Comstock v. Potter, 191 Mich. 629 (1916).

§355. Assignees of Labor Claims.

There seems to be no reason why an assignee of labor claims may not proceed directly under §9 (§350). The situation which existed at the time of the decision in Musselman v. Wright, 107 Mich. 639 (1895) has been changed by the Judicature Act of 1915. 3 C. L. 1915 (12766); 1 Cummins & Bercher's Michigan Judicature and Other Acts (2nd ed. p. 564).

§356. Remedies Provided by Judicature Act.

12. It is provided that: "Whenever by the constitution or laws of this state, the stockholders of any corporation

are individually liable for any debts of such corporation, the remedy for the enforcement of such liability shall be as hereinafter prescribed, and not otherwise. *Provided,* that this and the next succeeding twelve sections shall not apply where the suit is for labor and the action is brought by the person who performed the labor, *or his assigns.* 3 C. L. 1915 (12766); 1 Cummins & Beecher Michigan Judicature Act (2 ed., p. 564).

CHAPTER 4

CO-OPERATIVE CORPORATIONS

(References are to annotator's sections)

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§394. Dividends on Raw Material.
§395. Individual Holdings Limited to $1000.
§396. Votes.

PART II, CHAPTER 4, SECTION 1

§357. Laws Applicable to Co-Operative Corporations.

General Provisions.

Corporations organized to conduct any lawful business upon a co-operative plan [1] shall be gov-

Corporate Management.

erned by the provisions of this chapter as to the mode of corporate management, manner of distribution of earnings and profits, their power and optional principles of doing business, and as to any other matters, and things prescribed herein where the provisions of this chapter are inconsistent with or prescribe regulations or features differing wholly or to any extent from those provisions of this act in other chapters hereof governing corporations generally. Otherwise, such co-operative corporations shall be subject to the provisions of this act governing corporations generally, and excepting as provided in section one of chapter one of part three of this act,[3] shall be deemed to be corporations for pecuniary profit.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 4, PART II.

§358. Co-Operative Plan.

1. This chapter is a combination of provisions chiefly derived from Act 398 of 1913, 2 C. L. 1915 (9950), et seq., and Act 239 of 1917. It condenses nearly fifty pages of preexisting statutes into five. Cooperative corporations were first authorized in Michigan in 1869. Resenhouse v. Seeley, 72 Mich. 603, 613 (1888). They are now numerous in this state.

Such organizations have few, if any, of the characteristics of partnerships. Michigan Building & Savings Association v. McDevitt, 77 Mich. 1, 10 (1889). They are governed primarily by this act. As to matters not covered by the provisions of the act, they are controlled by the rules of law applicable to ordinary corporations.

§359. Co-Operative Corporations.

2. Such corporations are deemed corporations for profit; but they may be organized as corporations not for profit. (§397.)

Subdivision 1

PART II, CHAPTER 4, SECTION 2

§360. Co-Operative Plan Defined.

Purposes.

Such corporations may engage in any lawful business within this State upon any co-operative plan adopted by the incorporators, or by the stockholders at any annual or special meeting.

Definitions.

For the purpose of this chapter, the term "co-operative plan" shall be deemed to mean a mode of operation whereby the earnings of the corporation are distributed, in whole or in part, on the basis of, or in proportion to, the value of property bought from or sold to stockholders or members or other persons, or labor performed for or services rendered to the corporation: Provided, That the foregoing definition shall not be construed as prohibiting any such corporation from paying limited dividends to stockholders based upon stock investment, or from reserving a certain proportion of the earnings for future operations or for future distribution, before general distribution of net earnings shall have been authorized and made.[3]

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 4, PART II

3. This subdivision is substantially the same as Act 239 of 1917, but with changed phraseology and arrangement.

PART II, CHAPTER 4, SECTION 3

§361. Co-Operative Corporations—Stock and Transfers.

Certificates.

(a) There shall be printed upon each share of stock issued by such corporations a condensed statement of every article of by-law which in anywise limits the stockholders' right to assign or transfer such shares or to vote the total number of shares held at meetings of the corporation, or which forbids voting by proxy;

(b) The provisions of the Uniform Stock Transfer Law of this State shall not be held to apply to the shares of stock of such co-operative corporations in any manner or to any extent inconsistent with the provisions of this chapter.[4]

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 4, PART II

§362. Stock May be Non-Transferable.

4. By a suitable provision in the by-laws, stock of co-operative companies may be made non-transferable. (§366). The provisions of the Uniform Stock Transfer Act (106 of 1913, 3 C. L. [11920], et seq) do not govern.

PART II, CHAPTER 4, SECTION 4

§363. Co-Operative Corporations—Powers of Stockholders.

Powers.

The stockholders of any such corporation shall have power: To adopt by-laws for the government and regulation of its business management, and to amend such by-laws; to determine the manner of distributing the earnings of the com-

pany upon a co-operative plan; to limit and define the powers and duties and the number of directors and officers; to delegate to the directors any particular power or authority which the stockholders themselves possess, excepting the right to elect or dismiss directors and to amend the articles of incorporation; to fix the time for holding the election of its directors, which shall be annual unless a longer term is prescribed in the articles or by-laws;[5] to provide the manner in which directors and officers may be removed and their successors elected at any time by vote of the stockholders or members; to determine the manner in which stockholders may vote at stockholders' meetings by mail,[6] and whether or not proxies may be employed, and if so when and how; to determine whether or not stockholders shall be limited to one vote each, regardless of the number of shares held; to determine the number of stockholders or directors attending any meeting, or the number of shares represented at any meeting of stockholders shall constitute a quorum, which shall not be less than a majority of the stock outstanding in the case of meetings of the shareholders; and to provide a limitation upon the amount of capital stock which may be owned by any one stockholder therein; all of which shall be included in the by-laws or in the articles.

Limitation of Powers and Duties.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 4, PART II

§364. Cumulative Voting Law Inapplicable.

5. By the terms of this subdivision, the provisions of the act relating to cumulative voting may be rejected, and di-

rectors may be elected for more than one year, if the by-laws so provide.

§365. Voting by Mail.

6. If one may direct by mail how his proxy shall vote, there would seem to be no reason why the vote itself may not be cast by mail without the intervention of a proxy. However, the by-laws should provide that all questions upon which a vote by mail is taken must be clearly and fully submitted to the members in advance of the meeting. (§390.)

PART II, CHAPTER 4, SECTION 5

§366. Co-Operative Corporations—Transfer of Membership.

Qualification of Members.

The stockholders of every such corporation may also provide in their articles or by-laws, the necessary qualifications of stockholders or members, together with provisions limiting, prescribing or regulating the transfer of such membership, and the terms and conditions under which, if at all, certificates of stock may be transferred.

Sale.

No sale, transfer, or assignment of membership rights or of any stock in any such corporation shall be valid unless made in accordance with the articles or the by-laws of the corporation; nor shall any purchase and sale of any such stockholder's stock or privileges in such corporation made under execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law, give any person any stockholder's or membership right, title or interest in and to such corporation, unless in accordance with the articles or the by-laws of such corporation.[7]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 4, PART II

§367. Purchaser's Rights.

7. Where it is desired that the stock have a limited transferability, the language of (7953), C. L. 1915 is suggested as the basis for a form.

PART II, CHAPTER 4, SECTION 6

§368. Co-Operative Corporations—Amendments.

Amendments.

The by-laws of every such corporation shall provide a practical method and plan, whereby one-tenth of the entire number of members or stockholders may propose any desired amendment to the articles or to the by-laws of the corporation, and whereby any amendment so proposed shall be voted upon at the next annual meeting by the members or stockholders. Such by-laws shall also provide a practical method and plan whereby stockholders or members who are unable to be present at meetings of the corporation may vote by mail for directors or upon any amendment or proposition to be voted on at any regular or special meeting of stockholders or members.[8]

§369. Members "Unable to be Present."

8. Unable is defined as, "Not able; not having sufficient strength, means, knowledge, skill or the like; impotent; weak in power or poor in substance."—Webster Dict. Clearly, one who absents himself through indifference or because attendance would be inconvenient, or expensive, though within his power or means, would not be "unable to be present." But the by-law may provide that each

member or stockholder shall be the sole judge of his own ability to attend and that his determination upon that question shall be conclusive and final.

PART II, CHAPTER 4, SECTION 7

§370. Co-Operative Corporations—Affiliations.

Investment in Other Companies.

At any regular meeting, or any regularly called special meeting, at which the quorum fixed by the by-laws shall be present, the stockholders of any such corporation may by a majority vote of such stockholders present or represented (if proxies be permitted) subscribe for shares and invest a portion of the reserve fund of such corporation not to exceed, at any time, twenty per cent in the aggregate of its capital in the capital stock of any other similar co-operative company or companies with which it desires to co-operate or affiliate.

§371. Affiliation with Other Co-Operative Companies.

9. This step requires presence of a quorum in person or by proxy. Less than a quorum, supplemented by votes received by mail, resulting in more than a quorum vote, would be insufficient.

PART II, CHAPTER 4, SECTION 8

§372. Co-Operative Corporations—Stock for Property.

Purchase of Other Companies.

Whenever such corporation shall purchase the business of another company, person or persons, it may pay for the same in whole or in part by issuing to the selling association, person or persons, shares of its capital stock to an amount which, at par value, would equal the fair market

value [10] of the business so purchased, and in such case the transfer to the association of such business of such valuation shall be equivalent to payment in cash for the shares of stock so issued: *Provided,* That suitable provision be made in the by-laws of such corporation for admitting the vendors to such membership. Transfer.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 4, PART II

§373. Fair Market Value.

10. Good faith compliance with the act is all that is required. The valuation at which property is taken is presumed to be fair. The exercise of careful judgment as to property having no ascertainable market value will satisfy the statute. However, the valuation must be upon the basis of present worth, and may not include anticipated future increases in values. 5 Fletcher Cyc. Corp. p. 5882 note.

Subdivision 2.—Distribution of Earnings

PART II, CHAPTER 4, SECTION 9

§374. Distribution of Co-Operative Company Profits.

The stockholders of every such corporation shall provide in the by-laws what per cent upon the paid-up capital stock of such corporation, not exceeding seven per cent per annum, shall be first paid and distributed to the holders of such paid-up capital stock as dividends before dividing the surplus earnings or profits, as herein provided, and whether or not such dividends shall be cumulative. Said by-laws shall further provide what amount or percentage of the annual Dividends.

Annual Profits.

profit and earnings of the business, over and above such dividends to stockholders, shall be retained and kept in the treasury of the corporation as a reserve fund, and in what manner, method and proportion the surplus annual earnings and profits of the business of such corporation, in excess of such dividends and reserve fund, shall be divided up and distributed as a co-operative dividend, under the co-operative plan or principle adopted by such corporation among members doing business with the corporation; and may also provide for co-operative dividends to non-members.[11]

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 4, PART II

§375. Dividends to Non-Members.

11. At first thought, payment of dividends to non-members seems novel. But the principle of conferment of benefits upon persons unidentified with the corporate organization is as old as the law of private corporations. Hospitals, churches, schools and societies have always used some portion of their income—not infrequently a major portion—for the benefit of non-members. The act merely inducts this principle into the field of trade, commerce and industry. It is not illogical that one who produces commodities, or who finds a market for them, should participate in the profits of the corporation benefited by his services.

PART II, CHAPTER 4, SECTION 10

§376. Co-Operative Corporations Dividends.

Failure to Pay Dividends.

The surplus earnings and profits of every such corporation shall be distributed to those entitled

thereto at such times as the by-laws may provide, which shall be as often as once in each year. If any such corporation shall fail for five consecutive years to pay the dividend upon its paid-up capital stock in accordance with the provisions of its by-laws, a majority of the stockholders may petition the circuit court in chancery, in the county in which the principal office of such corporation is located, for the dissolution of the corporation; and if, upon the hearing, the court finds the allegations of the petition are substantially true, the corporation may be dissolved, its business wound up and its property distributed as the court may order and decree.[12]

Time.

COMMENTARIES ON THE TENTH SECTION OF OF CHAPTER 4, PART II

§377. Dissolution.

12. This section provides one ground and method of dissolution. Two other direct, statutory methods are available: (a) voluntary dissolution out of court (see §170), and (b) voluntary dissolution in chancery under provisions of the Judicature Act. (§172.) Dissolution may also be accomplished by reducing the corporate term through amendment of the articles of association. See §680, also Attorney General v. Gay, 162 Mich. 612, 615 (1910.)

PART II, CHAPTER 4, SECTION 11

§378. Co-Operative Contracts.

Every such corporation engaged in buying, other agricultural products, canned goods, or by- handling, selling or dealing in farm produce or

Contracts and Commissions.

Goods and Wares.

products of any such goods, wares, merchandise or commodities, may enter into any and all necessary contracts respecting the terms of such transaction, and may deal in such commodities upon commission or brokerage basis, by agency agreements, or upon a warehouse storage plan, and in so dealing in such commodities such corporation may make its contracts and agreements upon a co-operative basis, if deemed advisable. In any such co-operative contract the special co-operative agreements shall be stated as subject to priorities in favor of stockholders and others as provided for in the by-laws of the corporation.[13]

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 4, PART II

§379. Statement of Priorities.

13. If the words "stated as" were omitted from the last sentence of this section, the statute itself would be sufficient notice to put contractors upon inquiry. As the paragraph stands, contractors may contend that, if priorities are not stated, they have the right to presume that none exist.

Subdivision 3.—Elective Features

PART II, CHAPTER 4, SECTION 12

§380. The Short Co-Operative Code.

Short Code.

Any co-operative corporation may at its option, in its articles, adopt the provisions of this subdivision as governing its mode of operation, and in such case it shall make specific reference to such subdivision, chapter and part of this act.

Exempt.

The adoption of this subdivision shall not exempt such corporation from the other provisions of this chapter excepting as to provisions therein inconsistent with this subdivision.[14]

COMMENTARIES ON THE TWELFTH SECTION CHAPTER 4, PART II

§381. Elective Features—The Short Code.

14. It is contended that Subdivision 3 may be adopted as a whole in lieu of the more elaborate provisions preceding. This subdivision, supplemented by brief by-laws, supplies a practical, short code for ordinary co-operative organizations. It is based upon Act 398 of 1913, 2 C. L. 1915, (9950) et seq.

§382. Matters Referred to By-laws.

The matters referred to by-laws in Subdivision 3 are few and simple:

(a) Number, (not less than five) term, and time of election, of directors; (§385)

(b) Time of distribution of profits, "which shall be as often as once in 12 months"; (§389)

(c) Provision (if desired) that subscribers to stock may vote as stockholders after 50% of their subscriptions have been paid up in cash. (See §396.)

In other words, the statute itself affords a working code almost complete in itself where the provisions of Subdivision 3 are adopted.

By contrast, the matters referred to by-laws in Subdivisions 1 and 2 are numerous and susceptible of elaboration:

(a) Manner of distribution of earnings, (§363)

(b) Powers and duties of directors and officers, (§363)

(c) Delegation (if desired) of all powers of stockholders to directors, except right to elect and dismiss directors and to amend articles, (§363)

(d) Fixing time for holding elections, (§363)

(e) Manner of removing directors and electing successors, (§363)

(f) Manner of voting by mail, (§363)

(g) Regulating, or prohibiting, votes by proxy, (§363)

(h) Determination of basis of voting by stockholders, (§363)

(i) Determination of quorum of stockholders, but not less than a majority of stock outstanding, (§363)

(k) Determination of quorum of directors, (§363)

(l) Limitation upon the amount of stock which may be owned by any one stockholder, (§363)

(m) Qualifications of stockholders or members, (§366)

(n) Limitations upon, or prohibition of, transfers, (§366)

(o) Method of transfer, (§366)

(p) Method of admitting to membership persons who have acquired stock or rights under legal process or by operation of law, (§366)

(q) Method by which amendments to by-laws or articles may be proposed by one-tenth the number of members or stockholders, to be voted upon at the next annual meeting, (§368)

(r) Method of admitting to membership vendors of concerns purchased, where payment is made in stock, (§372)

(s) Determination of priorities in dividends to stockholders, not exceeding seven per cent, (§374)

(t) Determination of percentage of annual profits to be kept in reserve fund after payment of dividend to stockholders, (§374)

(u) Determination of distribution upon a co-operative basis of profits in excess of fixed dividends and reserve, (§374)

(v) Determination of basis of payment of dividends to non-members, (§374)

(w) Any other reasonable provisions "for the government and regulation of its business," not inconsistent with the act or with other general laws, (§363)

PART II, CHAPTER 4, SECTION 13

§383. Directors and Officers Under Short Code.

Directors.

Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for the time for which they were elected and until their successors are elected and shall enter upon the discharge of their duties; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting legally called, to remove any director or officer for cause,[15] and fill the vacancy, and thereupon the director, or officer so removed shall cease to be a director of said association.

Officers.

The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

COMMENTARIES ON THE THIRTEENTH SECTION OF CHAPTER 4, PART II

§384. Removal of Officers or Directors.

15. Removal cannot be groundless and arbitrary; it must be "for cause." The usual cause is malfeasance in office. 3 Fletcher Cyc. Corp. §1823, p. 3016. Gross and continued neglect of duty is a sufficient ground for removal. 2 Thomp. Corp. (2 ed.) §1817, p. 895. It is said that the cause must be connected with the office, and must have arisen after election of the officer. Prior misconduct does not, as a general rule, authorize removal. Hawkins v. Grand Rapids Common Council, 192 Mich. 276, 286 (1916); Speed v. Common Council of the City of Detroit, 98 Mich. 360 (1894). The procedure provided by the by-laws must be followed. "But in any case of removal for cause, the accused director must be notified of the charges against him and be given an opportunity to present his defense; for if he is afforded no notice or hearing the attempted removal will be void." 2 Machen Corp. §1433, p. 1184; Hatch v. Johnson Loan & Trust Co., 79 Fed. 828, 837 (1895); Copeland v. Minong Mining Co., 33 Mich. 2 (1875); 2 Thomp. Corp. (2 ed.) §1823, p. 1823; 3 Fletcher Cyc. Corp. §1824, p. 3017. As to removal of general manager pursuant to by-law, see Rundell v. Farmers' Co-operative Elevator Co. 210 Mich. 642 (1920).

PART II, CHAPTER 4, SECTION 14

§385. Amendment of Articles Under Short Code.

Amendments.

The association may amend its articles by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stock-

holders' meeting called for that purpose, on ten days' notice to the stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: Provided, That the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time when the amendment is adopted.[16]

Ten Days' Notice.

COMMENTARIES ON THE FOURTEENTH SECTION OF CHAPTER 4, PART II

§386. Majority Vote of Stockholders.

16. It will be noted that the majority vote required is a numerical majority of *all* stockholders. It is significant that the language employed is not "stockholders *present.*" As to ordinary amendments, §9, Chap. 1, Part II, §244 is to be followed. As to amendments affecting capital stock, §10, Chap. 2, Part II, §310 provides the rule of procedure.

PART II, CHAPTER 4, SECTION 15

§387. Powers Under Short Code.

Any association adopting this subdivision shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan and may buy, sell and deal in the products of any other similar co-operative company, heretofore organized or hereafter organized under or becoming subject to the provisions of this act.[17]

Powers.

COMMENTARIES ON THE FIFTEENTH SECTION OF CHAPTER 4, PART II.

§388. Purposes.

17. There was no necessity for this section, as such corporations have power to engage in "any lawful business" (except as excluded—§357) upon a co-operative plan. However, this provision is taken verbatim from §8 of Act 398 of 1913, and was evidently retained as a measure of reassurance to the organizations existing under that act.

PART II, CHAPTER 4, SECTION 16

§389. Distribution of Profits Under Short Code.

Dividends.

The profits or net earnings of such association shall be distributed to those entitled thereto, at such time as the by-laws shall prescribe, which shall be as often as once in twelve months, but no person or corporation from whom purchases of goods or materials incident only to the carrying on of the business of the association are made, or to whom produce in wholesale quantities is sold, shall in any case be included in the distribution of said profits.[18]

COMMENTARIES ON THE SIXTEENTH SECTION OF CHAPTER 4, PART II

18. This reenacts §13 of Act 398 of 1913.

PART II, CHAPTER 4, SECTION 17

§390. Notice Required for Voting by Mail.

Voting by Mail.

At any regularly called general or special meeting of the stockholders a written vote re-

ceived by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: *Provided,* He has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him.[19] Absent Stockholder.

COMMENTARIES ON THE SEVENTEENTH SECTION OF CHAPTER 4, PART II

§391. Voting by Mail.

19. At common law, all votes at corporate meetings were required to be given by the stockholder in person. 3 Fletcher Cyc. Corp. §1683, p. 2823. Statutory permission to vote is clearly an innovation, not according to the course of the common law. Hence the statute must be substantially followed, for the right is not found elsewhere.

It is suggested that the form of motion, or resolution, sent to the stockholder may be made a part of the ballot, upon a single sheet of paper, which is to be signed and returned.

PART II, CHAPTER 4, SECTION 18

§392. Reserve and Dividends on Raw Materials.

The directors, subject to revision[20] by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock not exceeding six per cent per annum, then setting aside not less than ten per cent of the net profits for a reserve fund until an amount has accumulated in said Profits.

Reserve Fund.

reserve fund equal to thirty per cent of the paid-up capital stock and the remainder of said net profits by uniform dividend upon the amount of purchases of shareholders, and to non-shareholders on the amount of their purchases at a per cent one-half as great as that paid to shareholders, which may be credited to the account of such non-shareholders on account of capital stock of the association; but in productive associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.[21]

COMMENTARIES ON THE EIGHTEENTH SECTION OF CHAPTER 4, PART II

§393. Subject to Revision.

20. This is construed to mean that, unless the basis of apportionment and application of profits be changed, the statutory method shall be pursued. But power to change is given. Of course such revision cannot affect profits previously distributed by action of the board of directors.

§394. Dividends on Raw Material.

21. The provision that dividends "shall be on raw material delivered" is construed to mean, that dividends may be paid to persons furnishing such material, and that such payment shall be upon the basis of, and proportionate to, the quantity or value (as may be decided) of the materials so furnished.

PART II, CHAPTER 4, SECTION 19

§395. Individual Holdings Limited to $1000.

Limit of Shares.

No stockholder in any such association shall own shares of a greater par value than one thousand dollars, or be permitted to vote by proxy, or be entitled to more than one vote. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders after fifty per cent of the stock subscribed for has been paid in cash.[22]

COMMENTARIES ON THE NINETEENTH SECTION OF CHAPTER 4, PART II

§396. Votes.

22. This is equivalent to providing that each stockholder, regardless of the number of shares held, shall have one vote.

The certificates are not the stock; they are merely evidence of stock. Union City Lumber Co. v. Traverse City, Leelanau & Manistique R. Co., 170 Mich. 205, 225 (1912). And a subscriber to stock by the act of subscription becomes a stockholder. (Id. p. 217). It follows that, in the absence of a restrictive by-law provision, subscribers have all of the voting rights of stockholders, irrespective of the amount paid in. (§395.)

PART III

CORPORATIONS NOT FOR PECUNIARY PROFIT

CHAPTER 1

CORPORATIONS NOT FOR PECUNIARY PROFIT —GENERAL PROVISIONS

(References are to annotator's sections)

§397. Non-profit Companies—Basis of Organization.
§398. Direct Pecuniary Profit.
§399. Non-profit Stock Companies.
§400. Non-profit Shares, Gains and Membership.
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§424. Notes and Mortgages of Non-profit Corporations.
§425. Invalidity of Unauthorized Notes and Mortgages.

PART III, CHAPTER 1, SECTION 1

§397. Non-Profit Companies—Basis of Organization.

Non-profit companies.

Corporations whose purposes do not include the transaction of commercial or other business

Pecuniary Profit.

for a direct pecuniary profit[1] to the members or stockholders, shall be governed by the provisions of this chapter in addition to such other provisions of this act as may be applicable thereto: *Provided,* That such corporations may transact business upon the co-operative plan, as provided in chapter four of part two of this act, if done without direct pecuniary profit to the members or stockholders. Such corporations may be organized upon either a stock share basis or upon a non-stock basis, and the membership therein may be limited either as to number or qualifications as fixed in the articles or by-laws.[2]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART III

§398. Direct Pecuniary Profit.

1. This expression has no established meaning, but it clearly indicates profits derived from operation, or otherwise, as a primary object. The profits allowed to stockholders of this class of companies are payable upon dissolution only, and consist of such gains as may accumulate *incidentally* through increase in the value of property owned, or as a result of prudent management.

§399. Non-Profit Stock Companies.

2. Act 171 of 1903 is the basis of this chapter.

"The power to create capital stock is a legislative function, and in any given case, in order that such stock may have a legal existence, the function must be exercised." Cooke v. Marshall, 191 Pa. 315, 196 Pa. 200, 64 L. R. A. 413 (1899); Detroit Chamber of Commerce v. Secretary

of State, 109 Mich. 691 (1896); Detroit Driving Club v. Fitzgerald, 109 Mich. 670 (1896); 5 Fletcher Cyc. Corp.

PART III, CHAPTER 1, SECTION 2

§400. Non-Profit Shares, Gains and Membership.

Denominations.

If organized upon a stock share plan the shares of such corporations shall be of denominations of ten dollars, or a multiple of ten dollars, but shall not exceed one hundred dollars. No dividends shall be directly paid on any such shares nor shall the stockholders be entitled to any portion of the earnings of such corporation derived through increment of value upon its property or otherwise incidentally made: *Provided,* however, That upon dissolution of any such corporation, the stockholders shall be entitled to an aliquot portion of the assets thereof after the payment of all debts and the liquidation of all liabilities of such corporation, based upon their several holdings therein as represented by the shares of stock standing in the name of such stockholders at the time of dissolution. Such shares of stock shall not be transferable by assignment or sale, nor be transfered to legal heirs or devisees, upon the death of the owner thereof, unless the by-laws of such corporation make express provision therefor.[3] Such stock corporations shall have power to exclude from further membership any stockholder who fails to comply with the reasonable and lawful requirements of the laws, rules and regulations duly made by such corporation for the government of its members, and may cancel the stock of any such offending member without liability for an accounting, excepting as may be provided for in the articles or by-laws.

Dissolution.

Exclusion.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 1, PART III

§401. Non-Transferable Stock.

3. The theory of the statute seems to be that membership in a non-profit corporation is a matter of personal privilege, whether stock be issued or not, and that this privilege ceases with the life of the member, unless the by-laws provide otherwise. It is presumed that, if this rule would operate unjustly, it will be tempered by suitable by-laws. There is no doubt concerning the validity of the statute. 6 Fletcher Cyc. Corp. §3759, p. 6260. But its application may be attended by difficulties.

It will be observed that there is nothing in the statute preventing passage of title in such stock to executors or administrators, by operation of law. Apparently they cannot sell and transfer it, but may they not hold it until dissolution of the company, and thereupon recover the distributive share that would have passed to the testator had he survived? It is elementary that the law abhors forfeiture and that equity will guard the rights of creditors with jealous care. Can it be true, for example, that because stock is non-transferable, shares in a company, having large accumulated assets about to be distributed through dissolution, will be lost to heirs and creditors by reason of the stockholder's death before dissolution, or after dissolution and before distribution? Shall surviving stockholders profit at the expense of the creditors of a deceased stockholder? The equities are otherwise. No precedent has been found in adjudicated cases. But the opinion is ventured that the personal representatives, upon dissolution of the corporation, may recover the decedent's distributive share for the benefit of his estate, under the statute, unaided by by-law provisions.

§402. Expulsion of Members.

4. Companies having stock are strictly limited to the power of expulsion conferred by the statute. Wescott v. Minnesota Mining Co., 23 Mich. 144, 163 (1871); 2 Purdy's Beach Corp. §542, p. 770. Non-profit companies without stock have always had the power to expel members for (a) offenses indictable at common law, (b) offenses against duty to the corporation as a member, (c) offenses compounded of the two mentioned. State v. Chamber of Commerce of Milwaukee, 20 Wis. 63. Other grounds of expulsion may be provided by reasonable by-laws. 2 Purdy's Beach Corp. §542, p. 770.

Before expulsion, the accused member is entitled to a hearing. People v. Mechanic's Aid Society, 22 Mich. 86, 91 (1870); People ex rel Pulford v. Fire Department, 31 Mich. 457 (1875). This hearing is conducted by and before the body of the membership, in the absence of by-laws providing otherwise. 6 Fletcher Cyc. Corp. §3966, p. 6755. But the by-laws may set up a tribunal. Derry v. Great Hive Ladies of the Modern Maccabees, 135 Mich. 494, 497 (1904). Proceedings before this tribunal are non-technical; "the only rule for the admission and exclusion of testimony is the rule of common fairness." Baker v. Great Hive Ladies of the Modern Maccabees, 135 Mich. 499, 503 (1904); Port Huron & Northwestern R. Co. v. Callanan, 61 Mich. 12, 26 (1886); Burton v. St. George's Society of Detroit, 28 Mich. 260 (1873). "A person who is a member of a corporation, unless he has waived or forfeited the right, always is entitled to a copy of the charges preferred against him, and to be present at the taking of testimony against him, or an opportunity afforded him so to do, and to produce testimony in his own behalf." Erd v. Bavarian National Aid & Relief Association, 67 Mich. 233, 236 (1887). And to cross-examine

witnesses produced against him. Rose v. Supreme Court Order of Patricians, 126 Mich. 577, 580 (1901). The action of the corporation, or of its duly constituted tribunal, is final if within the charter powers, and in good faith and pursuant to proper proceedings. Patrons' Mutual Fire Insurance Company v. Attorney General, 166 Mich. 438, 442, (1911); Raymond v. Farmers' Mutual Ins. Co., 114 Mich. 386, 392 (1897); Fillmore v. Great Camp Knights of the Maccabees, 103 Mich. 437, 442 (1894); Hembeau v. Great Camp Knights of the Maccabees, 101 Mich. 161, 163 (1894); Van Poucke v. Netherland St. Vincent De-Paul Society, 63 Mich. 378 (1886); Canfield v. Great Camp Knights of the Maccabees, 87 Mich. 626, 628 (1891); Russell v. North American Benefit Association, 116 Mich. 699, 702 (1898); Hoag v. Supreme Lodge International Congress, 134 Mich. 87, 89 (1903); Harris v. Detroit Typographical Union, 144 Mich. 422 (1906). However, no decision in this state has gone to the extent of holding that a single employee of a corporation may constitute a tribunal. Bishop v. Brotherhood of Locomotive Firemen & Enginemen, 204 Mich. 605, 612 (1919).

Mandamus is a proper remedy to restore to the rights of membership a member wrongfully expelled. Alnutt v. Subsidiary High Court, 62 Mich. 110 (1886); Meurer v. Detroit Musician's Benevolent & Protective Association, 95 Mich. 451 (1893); Erd v. Bavarian National Aid & Relief Association, 67 Mich. 233 (1887). But the writ is discretionary, and not a matter of right, and will not be granted after long acquiescence in an irregular expulsion. Bostwick v. Fire Department of the City of Detroit, 49 Mich. 513 (1883).

One who has been suspended or expelled has no rights as a member until reinstated (Edgerly v. Ladies of the Modern Maccabees, 185 Mich. 148, 166 [1915]) except such right to accounting as the by-laws may provide.

PART III, CHAPTER 1, SECTION 3

§403. Admission, Retention and Dismissal of Members.

Rules.

In all corporations governed by the provisions of this chapter, membership therein shall be governed by such rules of admission, retention and dismissal, as the articles or by-laws shall prescribe, provided that all such rules shall be reasonable,[5] germane to the purposes of the corporation,[6] and equally enforced[7] as to all members.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 1, PART III

§404. By-Laws Must be Reasonable.

5. Power to pass by-laws is not power to pass unreasonable by-laws. McCarty v. Caledonia Coal Co., 164 Mich. 692; Highland Park Association v. Boseker, 169 Mich. 4, 7 (1912); Brown v. Great Camp Knights of the Modern Maccabees, 167 Mich. 123, 132 (1911); Samberg v. Knights of the Modern Maccabees, 158 Mich. 568, 571 (1909); Wineland v. Knights of the Maccabees, 148 Mich. 608, 618 (1907).

§405. By-Laws Must be Germane to Corporate Purposes.

6. Legislation by the corporation for its own internal government, in the form of rules, regulations or by-laws, must be within the field of its charter powers and purposes. A by-law prohibiting acts within the powers conferred by statute, or purporting to authorize acts beyond the powers expressly or impliedly conferred by statute, cannot be sustained. People v. Young Men's Father Mat-

thew Total Abstinence Benevolent Society, 41 Mich. 67 (1879); Fletcher Cyc. Corp. §494, p. 1011.

§406. By-Laws to be Equally Enforced.

7. This provision does not mean that, if several members are guilty of the same offense, the right of expulsion must be exercised as to all, or it will not be enforcible as to any. Primarily the expression "equally enforced" is construed to mean equally enforcible. It is a familiar rule that by-laws, to be valid, must operate equally upon all members. 1 Fletcher Cyc. Corp. §496, p. 1015. It is believed, however, that the language "equally enforced" carries the principle one step further. A corporation may waive the provisions of a by-law by a course of conduct inconsistent with its enforcement. "By-laws may be abrogated by the continued disregard of them by the corporation, acquiesced in by the stockholders." 1 Thomp. Corp. (2 ed.) §1058, p. 1279; Westchester Fire Ins. Co. v. Earle, 33 Mich. 143, 151 (1876). Where a by-law has been habitually disregarded it cannot be invoked for the purpose of expelling a member upon the ground that he has violated it. This is believed to be the secondary meaning of the term "equally enforced."

PART III, CHAPTER 1, SECTION 4

§407. Management and By-Laws of Non-Profit Companies.

Management.

The property and lawful business of such corporations shall be held and managed by a board of trustees or directors, with such powers and authority as shall be necessary [8] to the complete execution of the purposes of each such corporation, as limited by the articles, or by-laws duly made and published. No such board shall be

Trustee or Director.

less than three in number, and each such trustee or director shall be a member or stockholder of such corporation as the case may be.[9] The by-laws of all such corporations shall be enacted by the stockholders or members assembled at any first or annual or special meeting of the members called in accordance with the provisions of this act or as provided in the articles of association; but the members may at any such meeting authorize the directors or trustees to enact and amend the by-laws not inconsistent with the articles.[10]

By-laws.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 1, PART III

§408. Powers and Authority of Managing Board.

8. The board is given such powers and authority as shall be "necessary" to fully attain the legitimate objects of the corporation. The word "necessary" does not mean indispensable or imperative, but extends to that which is convenient and useful. "It embraces all things suitable and proper for carrying into effect the powers granted." Detroit & Saline Plankroad Co. v. Detroit, 81 Mich. 562, 568 (1890); Commissioners of Parks and Boulevards v. Moesta, 91 Mich. 149, 153 (1892).

§409. Withdrawals.

9. Withdrawal from membership ipso facto vacates the office. (See §208).

§410. Directors' By-Laws.

10. Primarily, the by-laws of a non-profit corporation are to be made by the stockholders or members, unless the

authority be immediately delegated to the managing board. When so delegated, the board may by original enactment, or by subsequent amendment, make any by-law that might have been enacted by the stockholders or members, except a by-law increasing its own powers beyond a valid limitation imposed by the stockholders. 1 Thomp. Corp. (2 ed.) §970, p. 1187. A quorum of the board may adopt by-laws. Cahill v. Kalamazoo Mutual Ins. Co., 2 Doug. (Mich.) 123, 136 (1845).

Delegation to the board of power to adopt by-laws does not oust the stockholders or members of their power to exercise the same function. 1 Machen Corp. §692, p. 560; 1 Thomp. Corp. (2 ed.) §970, p. 1186. In case of conflict, the by-laws adopted by the stockholders control. 1 Machen Corp. §692, p. 560.

PART III. CHAPTER 1, SECTION 5

§411. Membership in Another Organization as Qualification.

Qualification.

If the membership in any such corporation be limited to persons who are members in good standing in other incorporated associations, lodges, churches, clubs, or societies, the articles of association shall in each case define such limitations, and in such case it may be further provided that failure on the part of any such member to keep himself or herself in such good standing in such other corporation or association shall be sufficient cause for expelling or dismissing such member from the corporation requiring such eligibility, subject to such regulations as may be enacted in the by-laws as to the nature and formalities of evidence that shall be prima facie sufficient to justify such dismissal or expulsion.[11]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 1, PART III

§412. Where Membership in Another Organization Controls Eligibility.

11. That expulsion from another body cannot operate to automatically exclude a person from membership in a second corporation is settled. Alnutt v. Subsidiary High Court, 62 Mich. 110, 112 (1886). He remains entitled to a hearing. But evidence of such expulsion, introduced at the hearing may be made sufficient, prima facie, to justify his expulsion from the second organization.

PART III, CHAPTER 1, SECTION 6

§413. Capitalization Non-Profit Companies.

Capitalization.

No corporation organized for non-profit shall be capitalized for an amount in excess of the sum of money necessary to carry out its purposes, including the purchase or leasing of such property as may be required for its offices or in its lawful business affairs, the payment of salaries and expenses of its officers for a period not exceeding five years from the time of incorporation, and the estimated expense of conducting and consummating its purposes aside from annual or other periodical contributions from sources other than the revenue derived from annual membership fees,[12] and no such corporation shall hereafter be capitalized at more than five hundred thousand dollars without the consent and approval of the Michigan Securities Commission created by act number forty-six of the Public Acts of nineteen hundred fifteen, after a hearing upon the merits and necessities therefor. The

Power and Authority.

Michigan Securities Commission shall have full power and authority in the premises to permit and regulate the use of such further capital as may be shown to be necessary and beneficial to the purposes of such corporation: *Provided,* That the limitation of capital prescribed herein shall in no case apply to corporations organized to carry out the provisions of any trust deed, or instrument, or of any will or other testamentary disposition of property wherein property of a definite value is committed or disposed of in trust, or wherein such property may be used in connection with the property or means derived from sources outside of that so placed in trust, to carry out the intention of the maker of such instrument.

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 1, PART III

§414. Capitalization of Non-Profit Corporations.

12. The capital employed, or authorized, at the outset may be sufficient,

(a) To cover the rent or purchase price of property required for offices or other business purposes;

(b) To cover salaries and expenses for five years; and

(c) To cover all operating expenses over and above fixed contributions other than membership fees.

It is contemplated that the amount may exceed $500,000, but in such case consent of the Michigan Securities Commission must be obtained.

Obviously, the capitalization at the outset must be based upon estimates. As long as the amount fixed is not grossly excessive, no objection will be made. In case the

capitalization is, or proves to be, clearly excessive, the state alone may complain. (See §126).

PART III, CHAPTER 1, SECTION 7

§416. Membership Fees and Dues.

Dues and Fees.

All such corporations are hereby empowered to fix the amount of the membership fees or dues which members may be required to pay initially or periodically, as a condition of admission or retention as such members, and to make rules necessary to enforce such requirement including provisions for cancellation of membership for non-payment of such dues or obligations and for reinstatement in such membership.[13]

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 1, PART III

§416. Expulsion for Non-Payment.

13. Non-payment of dues or obligations is a valid ground for expulsion. 6 Fletcher Cyc. Corp. §3963, p. 6749. In general, the defaulting member is entitled to notice and a hearing prior to his dismissal. Pulford v. Fire Department of the City of Detroit, 31 Mich. 457 (1875); People v. Mechanic's Aid Society, 22 Mich. 86, 91 (1870). But provisions to the effect that non-payment of dues or charges "shall *ipso facto* result in suspension or expulsion" have been sustained in other jurisdictions. 6 Fletcher Cyc. Corp. §3966, p. 6759. And one who has voluntarily withdrawn from a corporation may be suspended for cause without notice. Edgerly v. Ladies of the Modern Maccabees, 185 Mich. 148, 161 (1915). However, the only procedure which is at once just and safe under all circum-

stances is that which provides notice and an opportunity to be heard.

PART III, CHAPTER 1, SECTION 8

§417. Basis of Voting in Non-Profit Corporations.

Voting Rights

Each member of such corporations shall be equally privileged with all other members in his voice and vote upon any proposition presented for discussion or decision at any meeting of the members or stockholders, excepting that in stock corporations formed hereunder each shareholder may, if so provided in the articles or by-laws, be entitled to a number of votes equal to the number of shares of stock held by him; and otherwise there shall be no preferences as between members or stockholders based upon obligations of the corporation to the members or stockholders therein.[14]

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 1, PART III

§418. Equal Right of Voice and Vote.

14. If stock votes, all shares must be treated alike. The stock of non-profit corporations cannot be classified into voting and non-voting shares. The voting privilege may be upon the basis of shares, or each member may be given one vote only, irrespective of the number of shares which he holds.

PART III, CHAPTER 1, SECTION 9

§419. Powers of Non-Profit Corporations.

Powers.

Any such corporation the objects of which require the transaction of business, the receipt and

Care of Property.

payment of money, the care and custody of property, and other incidental business matters, shall have the right and power to transact such business, and to receive, collect and disburse such moneys, and to acquire, hold, protect and convey such properties as are naturally or properly within the scope of its articles.[15]

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 1, PART III

§420. General Powers.

15. Enumeration of these general powers adds nothing to the powers which such corporations would have possessed in the absence of such enumeration. It does, however operate to imply the exclusion of all other powers not fairly incidental to those enumerated. 2 Fletcher Cyc. Corp. §775, p. 1747; People v. Gansley, 191 Mich. 353, 357 (1916). But fairly incidental powers are not excluded. Webster v. Jossman, 199 Mich. 98, 113 (1917). And in this state all corporations have the powers which were inherent in corporations at common law, in the absence of some other provision. 3 C. L. 1915, (11328).

In determining powers, the court may consider germane historical facts and established departmental construction. Attorney General v. Buckley & Douglas Lumber Co., 164 Mich. 625, 637 (1911); People v. Michigan Central R. Co., 145 Mich. 140, 150 (1906): City of Muskegon v. County of Muskegon, 123 Mich. 272, 275 (1900); City of Detroit v. Chapin, 108 Mich. 136, 142 (1895); Attorney General v. Glazier, 102 Mich. 396, 409 (1894). "When, in the performance of executive duties, it becomes necessary for the executive department to construe a statute, great deference is always due to its judgment; and the

obligation is increased by the lapse of considerable time before the acts are called in question. Westbrook v. Miller, 56 Mich. 148, 151 (1885).

PART III, CHAPTER 1, SECTION 10

§421. Purposes of Non-Profit Corporations.

Purposes.

The provisions of this chapter shall be held to apply to all associations, societies and corporations of the nature of clubs, boards of trade and commerce, associations of persons engaged in the same or allied professions, trades, occupations and industries, when such persons desire to associate for mutual benefit, comfort or instruction not involving direct pecuniary profit; and to societies for the advancement of particular scientific or sociological, political views or opinions, the collection and dissemination of historical or scientific facts, the advancement of literature, cultivation of art, the prevention of cruel and inhuman practices, and to any other such society whether enumerated herein or not, so long as the purpose or purposes thereof are lawful, and not for direct pecuniary profit of the members: *Provided,* That any association or society heretofore incorporated and now existing whose purpose is to provide for the relief of distressed members, visitation of the sick, burial of the dead, and the payment of a voluntary sick or burial benefit to or for members, not exceeding in all the sum of one hundred fifty dollars on account of any one member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate under this chapter as a non-profit corporation.[16]

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART III

16. This in effect preserves the provision of §8 of Act 171 of 1903, as amended by Act 126 of 1911, 2 C. L. 1915, (9061).

PART III, CHAPTER 1, SECTION 11

§422. Liability of Directors Non-Profit Corporations.

Liability.

The funds and property of all such corporations shall be acquired, held and disposed of only for their lawful purposes, and the trustees or directors shall be individually liable for the misapplication or misuse of any such money or property caused through the neglect of such director or directors to exercise reasonable care and prudence in the administration of the affairs of such corporation or through wilful violation of the laws governing the same.[17]

§423. Individual Liability of Directors.

17. In non-profit corporations, in the absence of statutory provisions affecting liability, the directors are individually answerable for failure to exercise such reasonable prudence and diligence as a prudent person would exercise in the management of his own affairs. 2 Purdy's Beach Corp. §746, p. 1118; Snover v. Boynton, 173 Mich. 539, 551 (1913). The statute is cumulative with the common law. 4 Fletcher Cyc. Corp. §2408, p. 3662.

PART III, CHAPTER 1, SECTION 12

§424. Notes and Mortages of Non-Profit Corporations.

May Borrow Money, etc.

Any such corporation may, whenever its general interests require the same, borrow money

A New Section Added

§425a. Local Units of Associations.

SECTION 13. *Any association or corporation heretofore or hereafter incorporated under the provisions of section two, chapter one of part one, and chapter one of part three of the act, or which has adopted the provisions of this act on a non-stock membership basis, and which has more than five hundred members occupying a territory or district not less than a geographical county in extent, may, by by-law proposed by the board of directors of such association or corporation, enact that the members of the association or corporation and those who hereafter become members shall be grouped in local units formed upon the basis of territorial area or such other bases as may be determined in said by-law proposed by the board of directors as hereinafter provided, for the purpose of election of delegates or representatives to represent said members of such local units at any annual or special meeting of such association or corporation.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23 Act, No. 154, effective August 30, '23, by adding new sections to stand as sections 13, 14, 15 and 16.

A New Section Added

§425b. Territorial Limits.

SECTION 14. *The board of directors of said association or corporation shall have the power in said by-laws to provide the territorial limits or other basis from or upon which each local unit and membership therein is drawn or formed; to do all things necessary to insure the representation of said local unit or units at meetings of said association or corporation; and to provide the basis of representation and number of delegates to which said local unit or units are entitled: Provided, That each local unit shall be entitled to at least one delegate and that no delegate or delegates representing such local unity shall have a greater number of votes than the total membership of said local unit.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 154, effective August 30, '23. See note to Section 13.

Promissory Note.

and issue its promissory note or bond for the repayment thereof with interest, and may in like case mortgage its property as security for its debts or other lawful engagements, provided always, that the by-laws expressly authorized such action to be taken, or that the same is authorized by resolution of the stockholders or members at any regularly called meeting.[18] No such promissory note or mortgage shall be valid unless so authorized, but no such note or mortgage shall be deemed to be invalid for failure of the stockholders or members to include in their authorities the particular sums, rates of interest, or times of maturity of the loan or engagement, which items may be agreed upon and authorized by the directors.

COMMENTARIES ON THE TWELFTH SECTION OF CHAPTER 1, PART III

§425. Invalidity of Unauthorized Notes and Mortgages.

18. In effect, this section provides that notes and mortgages not authorized by resolution of the stockholders or members, or by-law—irrespective of amount—shall be void. Similar statutory provisions have been given full effect in this state. Hoyt v. Paw Paw Grape Juice Co., 158 Mich. 619, 625 (1909); Rhodes v. Malta Vita Pure Food Co., 149 Mich. 235 (1907); Citizens' Savings Bank v. Vaughan 115 Mich. 156 (1897); Geel v. Goulden, 168 Mich. 413, 421 (1912); Beach v. Business Man's Publishing Co., 163 Mich. 226, 229 (1910); 2 C. L. 1915, (7954). Under this statute, it has been held that the association might become estopped to question the validity of its unauthorized obli-

gation. Armstrong v. Stearns, 156 Mich. 594, 607 (1909). In that case, the statute under consideration did not provide that the unauthorized obligation should be "invalid," but only that the corporation should not be bound. 2 C. L. 1915, (7954). Unauthorized contracts under the present act are stamped by the law as "invalid." May this invalidity be waived? No doubt it may be. Its purpose is to protect the corporation. Benefit of provisions of this character may be waived. 6 R. C. L. §113, p. 706, 707. Thus it has long been held that a contract, *void* under the express terms of the statute of frauds, may be validated by the acts of the parties. Spalding v. Archibald, 52 Mich. 365, 367 (1883). See ante §317.

A New Section Added

§425c. Incorporation of Local Units.

SECTION 15. *The local units designated by by-laws of the association or corporation may or may not be incorporated under the laws of this state by the members thereof and shall have power to do all things necessary to give effect to the preceding sections and the rules and by-laws adopted hereunder.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 154, effective August 30, '23. See note to Section 13.

A New Section Added

§425d. Ownership of Stock of Other Corporations.

SECTION 16. *Any association or corporation heretofore or hereafter incorporated under the provisions of section two, chapter one, part one, and chapter one of part three of the act or which has adopted the provisions of this act on a non-stock or stock plan, may, subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade in furtherance of the objects of its existence, purchase and hold membership in any other corporations organized under the laws of this or any other state for purposes similar to those of such association or corporation. When any such association or corporation shall be a member in any other corporation, as in this section provided, its president and other officers or any of its directors shall be eligible to the office of director of such corporation the same as if they were individually members therein, and the association or corporation holding such membership shall possess and exercise in respect thereof all the rights, powers, privileges and liabilities of individual holders of such membership.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 154, effective August 30, '23. See note to Section 13.

CHAPTER 2

BENEVOLENT, CHARITABLE, SOCIAL AND SECRET SOCIETIES AND ORDERS

(References are to annotator's sections)

§426. Domestic and Foreign Secret Organizations.
§427. Parent Organizations—Formation.
§428. Representative Form of Government.
§429. Parent Organizations—Rights and Powers.
§430. Power to Charter Subordinate Lodges.
§431. Parent Organizations—Control over Subordinates.
§432. Judicial Bodies of Lodges.
§433. Parent Organizations—Management.
§434. Provisions of Articles of Parent Lodges and Societies.
§435. Duties of Secretaries.
§436. Parent Organizations—Name.
§437. Names Leading to Confusion or Deception.
§438. Parent Organizations—Property.
§439. Parent Organizations—Conventions.
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SUBDIVISION 1.—STATE JURISDICTION

PART III, CHAPTER 2, SECTION 1

§426. Domestic and Foreign Secret Organizations.

Secret Societies.

All societies, fraternal or otherwise, having for their principal purposes the teaching, practice and extending of patriotism, benevolence, charity and fraternity under the form of secret

Secret Rituals.

rituals with a lodge form of government as commonly understood, desiring to be incorporated to more effectually carry out such purposes, shall hereafter incorporate under the provisions of this chapter and act. No such society or lodge whose parent organization is incorporated under the laws of any other country or state shall be permitted to organize or incorporate any subordinate state or local jurisdiction or lodge within this State without first applying for and receiving permission to do business within this State as such foreign corporation.[1]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART III

1. This chapter is designed to provide for the organization of all secret societies, and to afford them all the advantages formerly found in various and numerous acts. This chapter is to be construed in conjunction with non-profit corporation provisions. (§427).

PART III, CHAPTER 2, SECTION 2

§427. Parent Organizations—Formation.

Parent Organization.

Any three or more persons, citizens of this State, may incorporate a secret society or lodge, fraternal or otherwise, for the purposes mentioned in section 1 hereof, which shall be the parent organization for this State. If such society or lodge shall be intended to operate as a State jurisdiction of a lodge or society having a parent organization without this State, then such persons so incorporating shall exhibit with their articles the charter or permit from such

foreign parent society or lodge permitting such incorporation within this State. The persons so incorporating shall execute and file articles in the form prescribed in chapter two, part one of this act, with the Secretary of State, as prescribed for non-profit corporations generally; and in addition to the other requirements of said chapter two, the incorporators shall state in such articles:

Charter of Foreign Society.

(1) That such society or corporation shall have a secret ritual, and a representative form of government,[2] whose purposes are not unlawful, and

Ritual.

(2) The executive offices within such society by such peculiar name as they shall be respectively known;

Officers.

(3) The principal features of organization, the distinguishing purposes, and the name of the society by which all subordinate lodges thereof shall also be known when organized.

Purposes.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 2, PART III

§428. Representative Form of Government

2. This means that the government of the society shall be vested in a definite body of persons elected by, and representive of, the membership. The object is to insure systematic government and an ascertained, responsible body with whom the state, the members and the public may deal.

PART III, CHAPTER 2, SECTION 3

§429. Parent Organizations—Rights and Powers.

Every such parent corporation shall have the right to prescribe the ritual to be used in all the

Ritual.

Oaths and Obligations.

secret work of such lodge or society, the oaths or other obligations to be taken by members or officers, and to enact by-laws, rules and regulations having uniform application throughout the organization. No such ritual, rules, regulations or by-laws shall be inconsistent with the laws of the United States or of this state. Such parent corporation shall have the right to organize and

Subordinates.

charter subordinate lodges [3] or societies thereof, and to enact a system of discipline to which all such subordinate lodges and individual members may be compelled to conform under pain of expulsion therefrom; and to prescribe the terms and conditions under which such subordinate lodges and members may be admitted, retained in good standing or suspended or expelled from such membership. Such parent corporation may delegate to its officers, committees and to subordinate jurisdictions, such functions and powers as the articles or by-laws of such corporation may from time to time prescribe, not inconsistent with the laws of this state.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART III

§430. Power to Charter Subordinate Lodges

3. There is, of course, a wide distinction between a charter from a parent lodge and a charter from the state. The charter from the parent lodge merely confers the privilege of enjoying the name, the secret ritual and the other benefits flowing from the parent organization. The chartered subordinate organization may be a voluntary association, in which case its members will be individually liable for its debts and obligations. Detroit Light Guard Band v. First

Michigan Independent Infantry, 134 Mich. 598 (1903); Jenkinson v. Wysner, 125 Mich. 89 (1900); Clark v. O'Rourke; 111 Mich. 108 (1896); Schiller Commandery v. Jaennichen, 116 Mich. 129 (1898); Inglis v. Millersburg Driving Association, 169 Mich. 311, 317 (1912). Or the subordinate organization may gain for its members the immunities incident to corporations by incorporating under this chapter.

Where an organization has been launched as a voluntary association, and incorporation is sought afterwards, unanimous consent of the members is necessary. No man may be brought into a corporation against his will. His consent is necessary to bring him in, not his dissent to keep him out. Mason v. Finch, 28 Mich. 282, 285 (1873); Schiller Commandery v. Jaennichen, 116 Mich. 129 (1898); Finney's Orchestra v. Finney's Famous Orchestra, 161 Mich. 289 (1910); Detroit Society for the Study and Prevention of Tuberculosis v. Detroit Society, 167 Mich. 102, 106 (1911). Until transferred to the new corporation, title to the property held by the voluntary association remains vested in its individual members. Walters v. Pittsburgh & Lake Angeline Iron Co., 201 Mich. 379, 387 (1918); Hopkins v. Crossley, 132 Mich. 612 (1903); Id. 138 Mich. 561 (1904); Somers v. Reynolds, 103 Mich. 307, 310 (1894).

PART III, CHAPTER 2, SECTION 4

§431. Parent Organizations—Control over Subordinates.

Every such parent corporation shall have the right to superintend, visit, instruct, and guide its subordinate lodges and jurisdictions, through its duly appointed officers, agents and committees; Discipline.

Judicial Functionaries.

may appoint its courts or judicial functionaries for the enforcement of its system of discipline within such lodge; may prescribe the initiation fees and annual or other periodic dues or contributions upon which membership may be conditioned, and may prescribe the proportion of such funds that shall belong to such parent corporation for the work of organizing, maintaining and carrying out the purposes of the society as a whole.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 2, PART III

§432. Judicial Bodies of Lodges.

4. In matters of discipline, the tribunal set up by the corporation acts in a quasi-judicial character, and its good faith action within the scope of its powers, in accordance with valid by-laws, is final and conclusive. Marshall Corp. §200, p. 510. But the courts have power to inquire whether the elements of conclusiveness existed; and if the proceeding was not conducted in good faith and within the scope of valid powers vested in the tribunal, the courts may set aside the tribunal's judgment. 1 Purdy's Beach Corp. §163, p. 204. (See §402).

PART III, CHAPTER 2, SECTION 5

§433. Parent Organizations—Management.

Management.

The fiscal and business affairs of every such parent corporation shall be managed by such executive officers, committees, directors or trustees as the articles shall prescribe, who shall

Powers and Liabilities.

severally have such powers and liabilities as may be prescribed in the articles or in by-laws made pursuant thereto. The articles [5] shall in all cases state the name of the committee having authority to enact the original by-laws of the parent corporation, and when and how the members thereof shall be elected or appointed and for how long such committee shall hold office. Every such parent society shall designate an officer who shall be its secretary whose powers and duties shall conform to those prescribed in this act for secretaries of corporations generally.[6]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART III

§434. Provisions of Articles of Parent Lodges and Societies.

5. The articles of association of such organizations should contain a statement of,

(a) The corporate name, (§65, 111)

(b) The section or sections of Chapter 1 of Part 1 under which the corporation will proceed, (§26)

(c) The purposes of the organization, (§72)

(d) The location of the principal office or place of business, and also the place where its main business office, if any, outside the state is located, (§72)

(e) The amount of assets, real and personal, possessed, (§85, 413)

(f) The capital to be employed and the method by which it is, or is to be, procured, (§85)

(g) The number and par value of shares, if any (§400)

(h) The term of existence, (§88, 161)

(i) The names and residences of the incorporators, (§88)

(j) The names and addresses of the officers, trustees or directors for the first year (or of an attorney-in-fact), (§93)

(k) The qualifications requisite to officers and members, (§403)

(l) The names of incorporators designated by resolution to sign and acknowledge the articles, if this method of organization be pursued, (§95)

(m) The statement that, (§427)

1. Such corporation shall have a secret ritual and a representative form of government, whose purpose is not unlawful, and
2. The names of the executive officers of the corporation, and
3. The principal features of the organization, the distinguishing purposes, and the name of the society by which all subordinate lodges thereof shall be known when organized, (§427)

(n) The titles of the executive officers, committees, directors or trustees who shall manage the fiscal and business affairs of the society, (§433)

(o) The powers and liabilities of such officers, or that such powers and liabilities shall be prescribed by by-laws, (§433)

(p) The name, term and manner of selection of the committee empowered to enact the original by-laws, (§433)

§435. Duties of Secretaries.

6. No special duties are assigned to secretaries under this act, except the duty to give notices of meetings, and the duty to join with the president in signing various instruments and reports to be filed in the office of the secretary

of state and in the office of the county clerk, and a like duty in relation to corporate mortgages. The other powers and duties of the secretary should be prescribed by the by-laws. (§433).

PART III, CHAPTER 2, SECTION 6

§436. Parent Organizations—Name.

Name.

No such parent corporation shall assume a name already in use by any other corporation, lodge, or society incorporated under the laws of this or any other state of the United States and admitted to do business in this state, nor any name which is so similar to that adopted by any other such lodge, or society as to lead to confusion or deception:[7] *Provided, however,* That local or other subordinate jurisdictions shall in all cases use the name of the parent corporation in addition to some suitable local designation.

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 2, PART III

§437. Names Leading to Confusion or Deception.

7. In a proceeding brought by the Supreme Lodge Knights of Pythias to enjoin use of the name Improved Order Knights of Pythias, it was said: "This case must be decided, not by citation of authorities, but by answering the question: 'Would an ordinary person, using ordinary care, wishing to join the Knights of Pythias, join the Improved Order Knights of Pythias?'" The question was answered by the court in the negative, and the bill was dismissed. Supreme Lodge Knights of Pythias v. Improved

Order Knights of Pythias, 113 Mich. 133, 140 (1897). In this case, as also in the case of Michigan Savings Bank v. Dime Savings Bank, 162 Mich. 297, 300 (1910) it was held that, "mere conjecture that some confusion may result is not ground for granting equitable relief."

As to conflict of names, see §§69, 70.

PART III, CHAPTER 2, SECTION 7

§438. Parent Organizations—Property.

Powers.

Every such parent corporation shall have power to hold in fee or otherwise, such real estate, and to own such personal property, as may be necessary to establish its state headquarters, or any charitable home or institution established or maintained by it, and for that purpose may contract for the purchase of land, take conveyance of, purchase, lease or rent such real estate as may be so necessary; and may in connection with any land or building erected thereon let or sublet any vacant space therein or thereon not necessary to the immediate requirements of the corporation. In case it shall become necessary or advisable for the corporation to execute any contract for the purchase of such land or the lease of any such building, or to sell, mortgage or convey the same, the executive or other committee or trustees having charge of the fiscal affairs of such corporation shall designate at least two officers of such corporation to execute and deliver such instruments on behalf of the corporation, as shall have been authorized by such committee or trustees.[8]

For correspondng section of Act 232 of 1903, see Appendix B (9053).

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 2, PART III

8. This section makes *express* powers that would otherwise have been implied. As to the execution of instruments; substantial compliance in good faith will be sufficient. Howard v. Factory Land Co., 167 Mich. 251, 254 (1911).

PART III, CHAPTER 2, SECTION 8

§439. Parent Organizations—Conventions.

Government.

Every such parent lodge or society so incorporated within this state shall adopt a representative form of government, under which form the subordinate lodges shall elect or appoint representatives to attend the annual or other convention, conclave or meeting of the parent corporation, by whatsoever name such meeting shall be known, and at which annual meeting the officers and committees of such parent or state society shall be elected by a majority vote of such representatives. The first annual meeting shall be held at a time and place to be fixed by the executive committee of the parent corporation; and thereafter such time and place shall be fixed by the convention itself.[9]

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 2, PART III

§440. Failure to Fix Time and Place of Annual Meeting.

9. If the annual meeting may be held only at the time and place fixed by the convention itself, neglect to make

provision for it would result in making further annual meetings impossible. This result is not intended by the statute, hence the requirement of this section must be taken as directory and not exclusive. It has been held that the executive board of a corporation has inherent power to call a meeting without express authorization. 1 Thomp. Corp. (2 ed.) §809, p. 993, 994; Dusenbury v. Looker, 110 Mich. 58 (1896); 1 Machen Corp. §1195, p. 996.

PART III, CHAPTER 2, SECTION 9

§441. Parent Organizations—Elections.

Elections.

The annual convention, conclave or meeting, when duly called to order, shall have power and authority to elect the officers and the executive committee or trustees of such parent state corporation; to elect delegates to any higher jurisdiction within said lodge or society; to alter or amend the articles or by-laws of the state parent corporation not inconsistent with the state charter of such lodge or society; to determine questions of discipline or policy; and to act upon such other matters as the articles or by-laws may require to be presented to such convention for action.

SUBDIVISION 2.—LOCAL JURISDICTIONS

PART III, CHAPTER 2, SECTION 10

§442. Local Lodges and Societies—Incorporation.

Incorporators.

Any number of persons who are members in good standing in any lodge incorporated as a parent society or lodge within this state, and having a charter or permit from such parent lodge

Local Lodge or Branch.

or society, may incorporate as a local lodge or branch thereof, upon complying with the provisions of this act appropriate to such corporations. The purpose of all such local lodge corporations shall be to further the interests of the parent society or lodge in such community, to hold the property of such local lodge or society and to become integral members of the parent lodge or society.[10]

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 2, PART III

§443. Purpose.

10. The purpose of the parent society, and the intent to further the interests of the parent society in the local community, and to hold the property of such local lodge or society, and to become and be a member of the parent lodge or society, should be stated in the articles as the purposes of the corporation. Other germane purposes may be stated if desired.

PART III, CHAPTER 2, SECTION 11

§444. Local Lodges and Societies—Articles.

Articles.

The articles of such local lodge or society shall follow the form prescribed for non-profit corporations in this act and shall contain such further statements as the incorporators may wish to insert therein as to purposes and government.[11] Every such articles shall state that such local lodge has been granted a charter by the state parent corporation, if there be one.

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 2, PART III

§445. Government.

11. It is usually best to regulate internal society government by means of by-laws, rather than by provisions in the articles. The by-laws may be amended readily to conform to changed conditions, while amendment of the articles is less convenient and more expensive.

PART III, CHAPTER 2, SECTION 12

§446. Local Lodges and Societies—Powers.

Powers.

Every such local lodge shall have the same right to hold, own and dispose of property, both real and personal as is granted in this act to non-profit corporations generally; and such local lodge shall be subject to the discipline, visitation and guidance of the parent lodge or society, or other higher jurisdictions as the plan of higher organization may prescribe.

PART III, CHAPTER 2, SECTION 13

§447. Local Lodges and Societies—Officers and Committees.

Officers.

Every such local lodge or society shall have such officers, committees, trustees and agents as their articles or charter may prescribe, who shall be elected or appointed and who shall have such duties, responsibilities and powers, as the charter, articles or by-laws may prescribe.

PART III, CHAPTER 2, SECTION 14

§448. Local Lodges and Societies—Powers.

Rights and Liabilities.

Every such corporation, whether parent or local, shall have all the rights, powers, immunities and privileges granted by this act to non-profit corporations generally, and, excepting as in this chapter prescribed, shall be subject to the liabilities imposed by law upon all corporations in this state.

As to rights, powers, etc., see post §§191, 192, 193; also Appendix B (9029, 9030).

As to liabilities, see post §§553, 555, 676, 686.

PART III, CHAPTER 2, SECTION 15

§449. Local Lodges and Societies—Charities and Benefits.

Relief Work.

Every such lodge whether parent or local shall have authority to make provision for the visitation of the sick and afflicted members; to provide funds for the relief of distressed members and their families; to provide funds for the burial of indigent or other worthy members: *Provided,* That no such funds shall be raised or maintained in the way of dues, assessments or levies based upon an insurance rate, table or contract express or implied: And *provided further,* That no such money shall be paid out of the treasury of any such lodge without the express order of the lodge itself or a committee duly authorized to consider and act upon such cases:[12] *Provided, however,* That nothing in this chapter contained shall be construed as prohibiting any such lodge from establishing and maintaining charitable homes or other institutions for its aged, afflicted

Infirm Members. or infirm members under the provisions of this act applying to trustee corporations.

For corresponding provision of Act 232 of 1903, see Appendix B (9053a).

COMMENTARIES ON THE FIFTEENTH SECTION OF CHAPTER 2, PART III

§450. Contractual Benefits Prohibited.

12. The object of the restrictions in this section is to safeguard the organizations by preventing the assumption of dangerous, fixed liabilities. Benefactions must be voluntary and their disbursement must be pursuant to "express order."

PART IV

TRUSTEE, EDUCATIONAL AND ECCLESIASTICAL CORPORATIONS

CHAPTER 1

TRUSTEE CORPORATIONS

(References are to annotator's sections.)

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SUBDIVISION 1.—GENERAL PROVISIONS

PART IV, CHAPTER 1, SECTION 1

§451. Trustee Corporations Defined.

Definitions.

A trustee corporation [1] is hereby defined to be any corporation wherein the trustees appointed by any instrument in writing, whether testamentary or otherwise, to have the title, care, custody or disposition of property or the income therefrom, in trust for such uses and purposes as may be named in such instrument, for the benefit of religious, charitable, benevolent, educational institutions or public benefaction of whatsoever name or nature and any other persons who may be lawfully associated with them, incorporate for the express and main purpose of carrying out the provisions of such trust. The term "trustee corporation" may also embrace any case in which trustees hold in their corporate name, any separate property of the corporation of which they are trustees for specific purposes defined or limited by any written instrument donating, setting aside or devoting such separate property for charitable, religious, benevolent, educational or other beneficial purpose, or where such property is so held by the said trustees under the terms of written instructions as to the use thereof from the governing body of any ecclesiastical, fraternal or charitable society, association or corporation.

Trustees.

Such trustees shall in no case have any personal interest in or title to any part or portion of such trust property, nor derive any personal benefit from the principal or income thereof,[2] excepting in the way of just compensation for their labor and skill in executing such trust or by way of reimbursement for necessary and actual expenses incurred in the management of such property or in the performance of their duties as such trustees, or except upon authority expressed in the original deed or instrument of trust. Nothing in this chapter contained shall be construed as preventing or prohibiting any trustees appointed or provided for under the terms of any deed, will or other written instrument to have the title or management of any property, whether real or personal, for the benefit of the donor or grantor therein or the heirs, dependents or other beneficiaries of such donor or grantor, and not for charitable, religious, educational or benevolent purposes, from incorporating under this act for the purpose of executing such trust, if such incorporation be permitted, directed or contemplated in such instrument, and the business of such corporation, when organized, is one which a corporation might otherwise carry on under this act: And *provided further,* That declarations of trust shall not be sufficient in themselves to authorize the trustees named therein to assume corporate powers,[3] but all such trustees referred to in this chapter shall be incorporated only in the manner prescribed in and by complying with the provisions of this act.

Other Trust Objects.

For corresponding provision of Act. 232 of 1903, see Appendix B (9053a).

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART IV

§452. Trustee Corporations.

1. It has long been established that corporations have capacity to act as trustees. Angell & Ames Corp. §166, p. 133. The modern trust company is founded upon this principle. In more recent years, the formation of unincorporated associations to hold and manage trust funds for ordinary business purposes—the so called "Massachusetts trust"—has called attention to the fact that a field exists in which corporations organized to manage living trusts, as well as testamentary trusts, may prove useful. The present chapter is a pioneer in this field. See ante §§12, 13, 14, 15, 16, 17.

Trustee corporations empowered to hold, invest, sell and otherwise manage and control property of religious denominations were authorized in Michigan in 1901. (Act 89 of 1901, 3 C. L. 1915, (10904). See Puffer v. Clark, 202 Mich. 169 (1918). Act 254 of 1917 added section 39 to Act 232 of 1903, and therein provided for incorporation of heirs or beneficiaries for the purpose of holding together and managing estates of decedents.

The present chapter provides for incorporation of trustees appointed "by any instrument in writing, testamentary or otherwise." The trust may be

(a) For religious, charitable, benevolent, educational or other public benefaction purposes (§§12, 15, 451); or

(b) For the holding of a corporate fund set apart and placed in trust for like purposes defined or limited by the instrument of donation, or held under written instructions as to use from any ecclesiastical, fraternal or charitable organization (§451); or

(c) For the benefit of the donor, grantor or his heirs,

dependents and other beneficiaries, if incorporation be permitted, directed or contemplated in the trust instrument and if the business to be conducted is not excluded by the terms of this act (§451).

The reasons for resorting to incorporation for the management of a specific trust are substantially the same as those which lead to the employment of trust companies to execute trusts generally. As stated by one court: "The facts that such corporations have perpetuity of existence, that they are less liable than natural persons to sudden fluctuations of fortune; that, being organized for that special purpose, they can administer estates more efficiently and economically; and that, in case of large estates, it is often difficult to find a natural person who is both able and willing to accept (or carry out) the trust, and give the necessary bonds—have suggested the necessity and created the demand for such organizations." Minnesota Loan & Trust Co. v. Beebe, 40 Minn. 7, 2 L. R. A. 418 (1889); 26 R. C. L. §123, p. 1273.

§453. Trustees to be Disinterested.

2. The trustees organizing a trustee corporation must be personally disinterested. This provision is in deference to the rule that "the same person cannot be both trustee and beneficiary." 39 Cyc. 248; 26 R. C. L. §121, p. 1272. While it is true that a cestui que trust is not absolutely prohibited under general law from acting as a trustee for his own benefit, (Id.) especially where he is one of several trustees, the statute aims to prevent the confusions incident to such divided allegiance.

§454. Corporations by Prescription.

3. Compliance with the statute is necessary to set up a trustee corporation. No doubt this language of the statute

was employed solely for the purpose of making this fact perfectly clear. The constitutional provision denying special charters to private corporations, long ago made charters by prescription impossible in this state. 1 Purdy's Beach Corp. §79d, p. 92. An early statute (Act 56 of 1869) provided "That, whenever any religious society or corporation shall have exercised the franchises and privileges of a corporation for the term of ten successive years, the same shall be presumed to have been legally organized pursuant to the laws of this state." Trustees First Society of the Methodist Episcopal Church of Newark v. Clark, 41 Mich. 730, 736 (1879); First Evangelical Lutheran Church Trustees of Dearborn v. Rlehlin, 49 Mich. 515 (1883); First Congregational Church Trustees of Ionia v. Webber, 54 Mich. 571 (1884). It has been held that a municipal corporation of this state may exist by prescription. People v. Maynard, 15 Mich. 463, 470 (1867).

PART IV, CHAPTER 1, SECTION 2

§455. Trustee Corporations—Trust Instrument.

Values Involved.

In any case[4] mentioned in the foregoing section where property, whether real, personal or mixed, amounting in value to one thousand dollars or more, has been or hereafter shall be so given, granted, devised, or bequeathed to three or more trustees, or in any case where the income from any property or fund has been or hereafter shall be so given, or bequeathed to such trustees for any such purpose, where the annual amount of such income is one thousand dollars or more, and where it shall, for the more effective and perfect administration of any such trust, be deemed expedient to organize themselves as a corporation, then it shall be lawful for such trustees to become

Trust Instrument.

incorporated under this chapter. The term "trust instrument" or "instrument of trust" as used in this act shall be construed to mean and refer to any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise or bequeath any property, real, personal or mixed in trust for general or specific uses; and any and all conditions, terms or directions contained therein; and any act, declaration or instructions of a legal nature made by any corporation or body directing or authorizing trustees thereunder to take, receive, hold, manage or dispose of any of the property of such corporation for general or specific purposes for the benefit of such persons or objects as may be therein designated. Such term shall not include constructive[5] or resulting trusts.[6]

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 1, PART IV

§456. Application of Present Act.

4. The present act is applicable and enables the formation of a trustee corporation when three or more trustees "by any instrument in writing, testamentary or otherwise," have been given, granted or devised in trust property, real, personal or mixed, of the value of $1,000, or more, or producing annual income of $1,000, or more,

(a) For religious, charitable, benevolent, educational or public benefaction purposes; or

(b) For the holding of a fund set apart and placed in trust by a corporation for like purposes, defined or limited by the instrument of donation, or held under written in-

structions as to use from any ecclesiastical, fraternal or charitable organization; or

(c) For the benefit of the donor, grantor or his heirs, dependents and other beneficiaries, if incorporation be permitted, directed or contemplated in the trust instrument and if the business to be conducted is not excluded by the terms of this act. (§451.)

As stated by Prof. Horace L. Wilgus in Vol. 1 Michigan State Bar Journal No. 3, p. xxi, "It would seem that under (c) above it would be possible to form a trustee corporation, under a deed of trust, by several persons, for carrying on any legitimate business similar to the 'Massachusetts Trusts for Business Purposes' and the beneficiaries under the deed of trust could retain control of the election of the trustees and the general management of the business, if the deed so provided, and avoid the dangers of partnership liability incident to that form of organization."

§457. Constructive Trusts.

5. "Constructive trusts do not arise by agreement or from intention, but by operation of laws; and fraud, active or constructive, is their essential element." 39 Cyc. 169. "Constructive trusts are such as arise by equity in respect of property which has been acquired by fraud, or where, though acquired originally without fraud, it is against equity that it should be retained by him who holds it." 26 R. C. L. §78, p. 1232; Pierce v. Pierce, 55 Mich. 629 (1885); Moore v. Mandelbaum, 8 Mich. 432, 444 (1860); Wales v. Newbould, 9 Mich. 45 (1860); Barrett v. Miller, 144 Mich. 454 (1906); Weir v. Union Trust Company, 188 Mich. 452 (1915).

§458. Resulting Trusts.

6. "A resulting trust may be defined as one which arises where the legal estate in property is disposed of, conveyed

or transferred, but the intent appears, or is inferred from the term of the disposition, or from the accompanying facts and circumstances, that the beneficial interest is not to go, or be enjoyed with, the legal title." 26 R. C. L. §57, p. 1214.

PART IV, CHAPTER 1, SECTION 3

§459. Trustee Corporations—Articles.

Articles.

The articles shall, in addition to other requirements in this act, state:

Nature of Business.

(a) The nature of the business, if any, in which such corporation will be engaged,[7] and the nature and value of the trust property; and to all such articles, wherever filed, there shall be attached verified copies of every trust instrument or other written directions upon which such trust is founded;

Board of Trustees.

(b) The number of persons who shall constitute the permanent board of trustees of such corporation; the length of time for which the trustees are authorized to act after election or appointment as the case may be; and the mode in which their successors shall be elected or appointed;

Membership.

(c) Whether or not other persons than the incorporators are, or may become, members or stockholders thereof.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 1, PART IV

§460. Excluded Purposes.

7. The excluded purposes mentioned in §30 of Chapter 1, Part 1, of the act cannot be among the purposes of a

trustee corporation. "The business of such corporation" must be "one which a corporation might otherwise carry on under this act." §451, Chapter 1, Part IV.

PART IV, CHAPTER 1, SECTION 4

§461. Trustee Corporations—Powers.

Officers.

Every trustee corporation shall have officers corresponding to those prescribed for corporations generally in this act, appointed or elected as such trustees may agree upon by majority vote, or as may otherwise be provided for in the trust instrument. Such corporation shall have all the rights, powers, privileges, and immunities conferred by law upon general corporations, excepting as limited in the trust instrument or by the provisions of this chapter.

PART IV, CHAPTER 1, SECTION 5

§462. Trustee Corporations—Gifts, Grants, Devises and Bequests.

Taking Additional Property.

Unless otherwise prohibited or not contemplated in the trust instrument, such trustee corporation may by gift, grant, devise or bequest, take, receive and hold any property, real or personal, so given, granted, devised or bequeathed from other persons than the person or persons by whose deed, will or other instrument the trust was originally founded. Any two or more persons may by the same instrument or by separate instruments, give, grant, devise, or bequeath property in trust, for any of the purposes mentioned in section one hereof, to the same trus-

tees upon such terms and conditions as may in such instrument or instruments be agreed on, and such trustees, if authorized to incorporate, shall attach to the articles of incorporation each and every one of such agreements, and shall be governed by the conditions therein imposed upon them, if not incompatible one with the other. After incorporation to carry out the express directions or conditions of any such trust instrument, no such trustees shall thereafter accept any gift, grant, devise, or bequest upon any condition or conditions incompatible with the articles or with any instrument required to be attached thereto.[8]

Terms and Conditions.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 1, PART IV

§463. Incompatibility of Provisions.

8. If there be doubt touching the compatibility of trust instruments, the trustees may apply to the courts for determination. Billings v. Marshall Furnace Co., 210 Mich. 1 (1920), 9 A. L. R. 1239, 1242; Dean v. Mumford, 102 Mich. 510 (1894); 1 Woerner Administration §155, p. 376.

"It is permissible for the trustee, when in doubt as to the extent of his powers, or as to the proper manner in which to proceed, to apply to a court of equity for instructions concerning the administration and execution of the trust; and the court will give such instruction provided the question involved is one of an equitable nature, in which the trustee has an interest, and provided the question presented is doubtful and requires immediate solution, and is not merely one which may arise in the future." 39 Cyc. 317, 318, 319.

PART IV, CHAPTER 1, SECTION 6

§464. Trustee Corporation—Duties and Management.

Responsibility.

The property and funds of every such corporation shall be faithfully and exclusively used for the purposes thereof as set forth in its articles or as required by the terms of the trust instrument; and such trustees shall be held to the same degree of responsibility and accountability with respect thereto as if not incorporated,[9] excepting where a less degree or a particular degree of responsibility and accountability is prescribed in the trust instrument, or where such trustees remain under the control of members or stockholders in such corporation other than themselves who retain the right to direct and do direct the action of the trustees as to the use of such trust property from time to time. Nothing herein contained shall be construed as prohibiting any such board of trustees, having more than five

Executive Committees.

members, from appointing an executive committee or such other committees as they may desire, with such powers and division of work and responsibility as such board may agree upon, not inconsistent with the trust instrument or with the general provisions of this act governing the management and powers of corporations. Such corporation may, unless otherwise specifically directed in the trust instrument, invest its funds

Loans.

by loan or mortgage security, or by purchase of any city, county, state or United States bonds, and of any other bonds authorized by the laws of this state for purchase by savings banks, or by loans on pledge of the same: *Provided*, That no loan of such funds shall be made to any trustee, officer or servant of such corporation.

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 1, PART IV

§465. Liability of Trustees.

9. The degree of responsibility to which unincorporated trustees are held is measured by, and is commensurate with, the care that would be exercised by a person of ordinary prudence and skill in the management of like business for himself. "It is incumbent upon him to preserve and protect the trust property for all the beneficiaries, and to administer it strictly in compliance with the terms of the trust. Failing to perform this duty, he is liable for any injury sustained by any person beneficially interested." 26 R. C. L. §130, 131, pp. 1280, 1281.

"When it is shown that a trustee has been faithful and diligent, the court will view his acts with indulgence, and will not hold him responsible for mere mistakes or errors of judgment, or for losses not attributable to any lack of fidelity or failure to exercise reasonable care and prudence; but good faith is no defense where the trustee has arbitrarily overstepped the bounds of his authority, or has been guilty of such gross neglect as no reasonably intelligent person would consider proper." 39 Cyc. 295, 296.

PART IV, CHAPTER 1, SECTION 7

§466. Trustee Corporations—Vacancies.

Vacancies.

In any case where the trust instrument fails to provide for the filling of vacancies among the trustees due to death, disability, resignation or other cause, and such vacancy occurs, the remaining trustees may apply to the circuit court in chancery of the county where the principal business office of such corporation is located, for the

Suitable Person.

appointment of some suitable and competent person to fill such vacancy, and the circuit judge thereof may, upon such expárte or other showing as he may require, make such appointment by an appropriate order, and the person so appointed shall, upon filing his written acceptance as such trustee, be and become a trustee of such corporation with the same powers as those originally appointed.[10] A certified copy of every such order shall be forthwith filed with the Secretary of State and with the county clerk or clerks where the original articles were filed.

COMMENTARIES OF THE SEVENTH SECTION OF CHAPTER 1, PART IV

§467. Appointment of Trustee to Fill Vacancy.

10. It is an established principle of equity jurisprudence that a court of equity will not permit a trust to fail for want of a trustee. 3 Pomeroy's Eq. Jurisprudence (4 ed.) §988, p. 2149; Schehr v. Look, 84 Mich. 263, 267 (1890); Penny v. Croul, 76 Mich. 471, 481 (1880); 26 R. C. L. §123, p. 1273; 39 Cyc. 277.

PART IV, CHAPTER 1, SECTION 8

§468. Trustee Corporations—Aid of Chancery.

Direction of Court.

In any case where the trustees of any such trustee corporation are in honest doubt and unable to agree as to the construction of any of the terms or conditions of any such trust instrument or their powers or duties thereunder, any or all of such trustees may file his or their petition in the circuit court in chancery for the county in

Construction of Instrument.

which the principal business office of such corporation is located, asking for the construction of the said court upon the whole or any part of such instrument, under and by the same procedure as is provided by law for the construction of wills. In case any public interest is involved, the prosecuting attorney of such county shall enter his appearance therein, and shall do so in all cases involving hospitals or charitable homes or similar institutions to which the general public may be admitted on application. If less than the entire board of trustees joins in such petition, the remaining members shall become defendants and shall be served with such notice or other process as the rules of the court may require. Such court shall have jurisdiction to determine every doubtful, or disputed question raised by such petition, and the opinion and directions of such court, when filed, shall be binding upon such corporation and the trustees thereof.[11]

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 1, PART IV

11. See §463.

PART IV, CHAPTER 1, SECTION 9

§469. Trustee Corporations—Amendment of Trust.

Amendments.

If the donor, or grantor in any such trust instrument, shall desire to alter, amend, enlarge or restrict the gift or grant or any of the terms or conditions thereof, and does so, it shall be the duty of such trustees to forthwith file a verified copy of such amended trust instrument with the

Filing Amendments.

Secretary of State and the county clerk where the original articles were filed, and any amendments to such articles occasioned by such amended trust instrument shall likewise be forthwith made and filed by such trustees, but no such amendments to the articles shall be valid that change the original purposes of the corporation in their entirety.

Subdivision 2.—Hospitals or Asylums

Part IV, Chapter 1, Section 10

§470. Trustee Corporations—Charitable Institutions.

Charitable Institutions

In all cases where lands, or any other property, amounting in value to five thousand dollars or upwards, have been or shall hereafter be given, granted, devised or bequeathed to three or more trustees for the purpose of founding or endowing a hospital or other charitable asylum for the care or relief of indigent or other sick or infirm or aged persons, or the care of minor orphans or crippled children or for the care and protection of unfortunate women, or any number of such purposes, such trustees may incorporate under this act as a trustee corporation.[12] Unless restricted by the trust instrument in respect thereto such trustees may unite in such incorporation with other persons contributing to the maintenance of such hospital or asylum, and all such other persons shall become members of such corporation upon making such contribution as may be fixed and determined in the articles or by-laws of the corporation: *Provided,* That any three or more persons may incorporate for any such charitable purpose as a trustee corporation, where the hos-

Additional Members.

pital, home, asylum, or other institution to be founded by such corporation is to be constructed, equipped and maintained principally by donations not made under any trust deed or other instrument in writing declaring the uses and purposes to which such property shall be devoted, and every such corporation shall have authority to fix and prescribe the terms and conditions of membership therein. Proviso.

COMMENTARIES ON THE TENTH SECTION OF CHAPTER 1, PART IV

12. Hospitals and Asylums. This subdivision broadens, and preserves the essential features of, Chapter 208, C. L. 1915 (10840), et seq.

PART IV, CHAPTER 1, SECTION 11

§471. Trustee Corporations—Indenturing Children.

The trustees of such corporation, or a majority of them, are hereby authorized and empowered to indenture or apprentice to responsible persons, any destitute or foundling children now, or which may be hereafter, in charge or care of said corporation, until such children shall respectively become of lawful age, and to make such indenture in each case as binding and effective in all respects as if said trustees were the lawful parents or guardians of said children: *Provided,* Said trustees shall have power to withdraw such child from any person to whom he or she may be indentured, when in their opinion the interests of the child may require it.[13] Control of Children.

COMMENTARIES ON THE ELEVENTH SECTION OF CHAPTER 1, PART IV

§472. Indenturing Minors.

13. For statute governing, see 2 C. L. 1915 (7230). For subject of Apprentices, see 3 Cyc. 542; Lepau v. MacKinnon Boiler & Machine Co., 178 Mich. 18 (1913); Bradley v. Perkins, 138 Mich. 356 (1904).

Subdivision 3.—Fraternal, etc., Hospitals, etc.

PART IV, CHAPTER 1, SECTION 12

§473. Trustee Corporations—Incorporation of Boards of Control.

Incorporation.

Whenever there shall exist any hospital, asylum, home for the care of indigent, aged or infirm persons, or any other charitable institution in this state, the legal title to which and the land used in connection therewith has been conveyed to one or more persons in trust, for charitable purposes, and the care and management of which institution is entrusted to a board of control consisting of five or more persons, appointed from one or more charitable, religious or fraternal bodies, in pursuance of the provisions contained in the deed conveying the legal title of such institution and land to such trustees, such board of control may become incorporated as a trustee corporation and become subject to the provisions of this chapter.[14]

COMMENTARIES ON THE TWELFTH SECTION OF CHAPTER 1. PART IV

14. The provisions of this section relating to Fraternal Hospitals, Asylums and Homes are founded upon 3 C. L. 1915 (10849).

PART IV, CHAPTER 1, SECTION 13

§474. Trustee Corporations—Sale of Trust Property.

Powers.

Such corporations may receive gifts, bequests and devises of money and other personal property and real estate for the benefit of the hospital, asylum or home for the care of indigent, aged or infirm persons, or other charitable institution which it has in its charge, and shall have power to sell such real estate and personal property as shall be given to it, and invest the proceeds thereof in the same manner as is provided in this chapter for the investment of gifts and bequests of money to trustee corporations whenever, in the judgment of the proper officers or committee or committees of such corporation, it may be deemed beneficial to such institution.

Subdivision 4.—Trustee Corporations for Certain Religious Societies

PART IV, CHAPTER 1, SECTION 14

§475. Religious Trustee Corporations—Association of Associations.

Association.

When there is organized within this state any presbytery, diocesan convention, diocese, synod, conference, district or other organization, being an association of congregations or societies, or a quarterly conference of a station, mission, class, congregation, circuit or other organization of a religious denomination, which shall desire to possess corporate powers [15] in order to effectuate the purposes of such organization or to create a corporate board of trustees for any endowment or other property of the denomination repre-

Meetings of Organization.

sented by such body, such diocese, presbytery, diocesan convention, synod, conference, board of district stewards, or a quarterly conference thereof, may, at a meeting thereof held and conducted according to the rules and regulations of such organization, association or quarterly conference, elect trustees in number not more than nine nor less than three, and also designate the corporate name by which such trustees and their successors in office shall be known. It shall be the duty of the officer presiding over such election to give to such trustees a certificate of their election under his hand and seal, specifying the name by which such trustees and their successors shall thereafter be known. They and their successors shall hold their offices for the term specified in such certificate of election, or until the organization or association first making such election elects others to succeed them. Such trustees, upon receiving certificates of their election, shall file articles with the Secretary of State and the county clerk of a county within whose bounds such electing body is authorized to meet, and shall be subject to the provisions of this act relating to trustee corporations.

COMMENTARIES ON THE FOURTEENTH SECTION OF CHAPTER 1, PART IV

§476. Trustee Corporations of Religious Societies.

15. This subdivision is based upon 3 C. L. 1915 (10904 to 10912). As to membership, see Bretzloff v. Evangelical Lutheran St. John's Sick Benefit Society, 125 Mich. 39 (1900). As to reversion to grantor upon failure of trust, see Puffer v. Clark, 202 Mich. 169, 199 (1918);

Estes v. Muskegon County Agricultural & Driving Park Association, 181 Mich. 71, 75 (1914); School District No. 5 of Delhi v. Everett, 52 Mich. 314 (1883), Blanchard v. Detroit, Lansing & Lake Michigan R. Co., 311 Mich. 42 (1875); Thayer v. McGee, 20 Mich. 195 (1870).

Where a fund is accumulated for a specific purpose, it cannot be diverted to another purpose without the consent of the donors. Eis v. Croze, 149 Mich. 62 (1907).

PART IV, CHAPTER 1, SECTION 15

§477. Religious Trustee Corporations—Elections.

Trustees.

Elections of trustees to fill the places of those whose terms of office expire shall take place at the last regular meeting of such presbytery, synod, conference, diocesan convention or other representative body occurring prior to the expiration of the term of their predecessors. Vacancies in any such board of trustees caused by death, resignation, removal, declination to serve, or otherwise, may be filled by the appointing body at any regular meeting thereof, or at any special meeting called for that purpose, or for that and other purposes, pursuant to the rules of such body.[16]

COMMENTARIES ON THE FIFTEENTH SECTION OF CHAPTER 1, PART IV

§478. Vacancies.

16. Power to fill vacancies, when vested in a board by statute, does not extend to filling vacancies created by increasing the authorized number of directors or trustees. 3 Fletcher Cyc. Corp. §1759, p. 2962.

PART IV, CHAPTER 1, SECTION 16

§479. Religious Trustee Corporations—Management.

Powers.

Such trustees may, in their corporate name, take and hold all property, real and personal, devised, bequeathed, transferred or conveyed to them for the use and benefit of the religious denomination by whose representative body they are appointed. In the management and disposition of such property they shall be governed by the terms of any will, deed, or other instrument by which such property shall be given to them, and subject to such terms, by the directions of the body by whom they were elected.[17]

COMMENTARIES ON THE SIXTEENTH SECTION OF CHAPTER 1, PART IV

§480. Terms of Trust Paramount.

17. The powers of a trustee are measured by the trust instrument. "But when the trustee conforms with the provision of the trust instrument in their true spirit and meaning, he may adopt such measures and do such acts as are implied in its general directions and are proper and reasonable means for making them effctual; and within the limits of the authority conferred upon him, the trustee has an implied and sometimes an express power of discretion, which discretion will not be construed to operate upon powers withheld, or to justify the trustee's refusal to act, nor to be any other than a proper and honest judgment, considering the nature and object of the trust, the amount of the trust fund, and the circumstances of the beneficiaries." 39 Cyc. 291, 292; First National Bank of Ionia v. Michigan

Trust Co., 105 Mich. 107 (1895). "Good faith is a defense only when a trustee, acting within the limits of his powers with proper prudence and diligence, commits mere mistakes or errors of judgment; but is not a defense where a trustee disregards the limits placed upon his power by law, or by the trust instrument." Gibney v. Allen, 156 Mich. 301, 311 (1909).

A direction to trustees to use their best skill and discretion does not, of itself, enlarge their discretionary powers. "Strictly it is a direction to exercise more than ordinary care and prudence." Michigan Home Missionary Society v. Corning, 164 Mich. 395, 402 (1911). So, where trustees are directed to safely invest trust funds, without designation of the securities to be acquired, they are required to exercises sound discretion and good faith, and will be responsible for any failure to do so. Caspari v. Cutcheon. 110 Mich. 86, 89 (1896).

PART IV, CHAPTER 1, SECTION 17

§481. Religious Trustee Corporations—Powers of Trustees.

Investments.

The said trustees may, in their corporate name, invest and re-invest the property in their hands and under their control as such trustees, collect the rents, issues and profits thereof, and out of the same pay the taxes, repairs, insurance and other expenses incident to the care thereof: *Provided, however,* That the said trustees shall neither sell, convey, mortgage, nor lease for a longer period than three years, any real estate held by them as such trustees, unless duly authorized to do so by the presbytery, synod, conference, diocesan convention, or other representative body which appointed them. And in every

Filing Certificate.

case of sale, conveyance or incumbrance of real estate, said trustee shall cause to be filed in the office of the register of deeds in the county in which such real estate is situated, with the instrument, a copy of the acts of said presbytery, synod, conference, diocesan convention, or other representative body authorizing such sale, conveyance or incumbrance, duly certified by the secretary of said representative body to be a true and complete copy of said proceedings. And such certificate so made and filed shall be prima facie evidence of the facts therein recited.

Subdivision 5.—Foundations for the Promotion of Public Welfare

Part IV, Chapter 1, Section 18

§482. Foundations—Incorporation.

Public Welfare.

Any number of persons, not less than three, may become incorporated as a foundation for the purpose of receiving and maintaining a fund, or funds, and applying the income thereof to promote the preservation and perpetuation of persons and objects of historical and natural interest.[18] Any such foundation shall be authorized to expend its funds and income from time to time as shall seem expedient to the trustees of such foundation, hereinafter provided, for the purposes of such foundation, which may include the preservation of forests; the establishment and maintenance of museums or parks for the benefit of the people; the collection and preservation of historical documents, data, research and publications; and to extend aid and support to any such objects and purposes, agencies or institutions al-

Amendment to the Statute

§482. Foundation—Incorporation.

SECTION 18. Any number of persons, not less than three, may be become incorporated as a foundation for the purpose of receiving and *administering* * * *[a] funds for perpetuation *of the memory of* persons, preservation of objects of historical or natural interest, [18] *or for public welfare.* Any such foundation shall be authorized to expend its funds and income from time to time as shall seem expedient to the trustees of such foundation, hereinafter provided, for the purposes of such foundation, which may include the preservation of forests; the establishment and maintenance of museums or parks for the benefit of the people; the collection and preservation of historical documents, data, research and publications; and to extend aid and support to any such objects and purposes, agencies or institutions already established, or which may hereafter be established. Every such corporation shall be governed by the provisions of this act relating to trustee corporations excepting as in this subdivision otherwise provided.

Approved May 26, 1925.

a. The words omitted are: "a fund, or and apply the income thereof to promote the preservation and."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 342, effective August 27 '25.,

ready established, or which may hereafter be established. Every such corporation shall be governed by the provisions of this act relating to trustee corporations excepting as in this subdivision otherwise provided.

Support of Institutions.

COMMENTARIES ON THE EIGHTEENTH SECTION OF CHAPTER 1, PART IV

§483. Public Welfare Foundations.

18. Primarily, a foundation is, "The establishment of a charity; that upon which a charity is founded and by which it is supported." 1 Bouvier Law Dict. 610. The giver of the first donation is the founder, and the fund given is the foundation. 19 Cyc. 1149. Prof. Wilgus has pointed out that the expression "perpetuation of persons" undoubtedly means the perpetuation of the memory of persons. Vol. 1 Mich. State Bar Journal, No. 3 p. xxiii.

This subdivision is principally derived from Act 59 of 1917, much of which is reenacted.

PART IV, CHAPTER 1, SECTION 19

§484. Foundations—Powers.

The foundations hereby authorized shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its objects and purposes, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and re-invest the principal thereof and

Powers.

Income of Foundations.

deal with and expend the income of the foundation in such manner as in the judgment of the trustees will best promote its objects.

PART IV, CHAPTER 1, SECTION 20

§485. Foundations—Non-Profit Trustee Corporations.

Non-Profit Foundations.

Every such foundation shall be a non-profit corporation and subject to the provisions of chapter one of part three of this act excepting as herein otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the people: *Provided,* This section shall not prevent such foundations from charging an admission fee, or similar charge, to museums, forest reserves, parks and other institutions organized hereunder for the sole purpose of paying the expense of maintenance.

PART IV, CHAPTER 1, SECTION 21

§486. Foundations—Membership and Management.

Trustees.

The trustees shall provide in the articles the terms and the manner in which members may be admitted to foundations established in pursuance of this subdivision. The affairs of such foundation shall be managed by trustees to be elected by the members as provided by the by-laws, but in no case shall the number of trustees be less than three or more than fifteen. Such trustees shall hold their offices for one year, or such other period as the by-laws shall determine and until their successors are elected and qualified.

PART IV, CHAPTER 1, SECTION 22

§487. Foundations—Winding Up.

Dissolution.

Should any corporation organized under this subdivision cease to operate or its fund be diverted from the lawful purposes of its organization, or become unable to usefully serve such purpose, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property, in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

PART IV, CHAPTER 1, SECTION 23

§488. Trustee Corporations—Scholarship Funds.

Scholarship Fund.

The provisions of this chapter shall apply to corporations heretofore or hereafter formed for the purpose of providing scholarships in the University of Michigan or in any of the publicly maintained schools or colleges of this state;[19] and to corporations formed for the purpose of loaning money or giving other assistance to students at any of said schools, or colleges or said university, but no such corporation heretofore formed shall be required to change or amend its articles or by-laws by reason of anything contained in this chapter, nor shall the rights, powers, privileges, immunities or the mode of doing business of any such existing corporation be deemed to be affected by any provision hereof which may be inconsistent with the provisions of the act under which any such corporation shall have been organized. Every corporation heretofore formed under any law of this state for be-

Definition of Trustee Corporations.

nevolent or charitable purposes, and having no capital stock, shall be deemed to be a trustee corporation within the meaning of this chapter and shall be subject to the provisions hereof excepting as such provisions may conflict with the articles and by-laws of any such corporation lawfully made and enacted pursuant to the act under which incorporated. But any such corporation may amend its articles and by-laws so as to bring itself in conformity with the provisions hereof.

COMMENTARIES ON THE TWENTY-THIRD SECTION OF CHAPTER 1, PART IV

19. See 3 C. L. 1915 (10676), et seq.

CHAPTER 2

EDUCATIONAL CORPORATIONS

(References are to annotator's sections)

§489. Educational Corporations—Acts Applicable.
§490. Educational Corporations.
§491. Educational Corporations—Showing in Articles.
§492. Denominational Educational Corporations.
§493. Educational Corporations—Classification.
§494. Power to Confer Degrees.
§495. Educational Corporations—Articles.
§496. Legislative Control.
§497. Educational Corporations—Trust Property.
§498. Educational Corporations—Management.
§499. Power to Fix Requirements of Admittance.
§500. Educational Corporations—Diplomas and Certificates.
§501. Mandamus.
§502. Educational Corporations—Visitation and Reports.
§503. Visitation.
§504. Taxation of Educational Institutions.
§505. Liquidation.

Subdivision 1.—General Provisions

PART IV, CHAPTER 1, SECTION 1

§489. Educational Corporations—Acts Applicable.

Educational Corporations.

Corporations for the purpose of founding, establishing and operating a college, seminary, academy, school, conservatory or other institution of learning shall be governed by the provisions of this chapter in addition to such other provisions of this act as may be applicable to the particular class of corporation so organized.[1]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART IV

§490. Educational Corporations.

1. This chapter is a consolidation of the various acts found in Chapter 203, C. L. 1915 (10642), et seq.

Such institutions may be for profit, or non-profit, or trustee corporations.

PART IV, CHAPTER 2, SECTION 2

§491. Educational Corporations—Showing in Articles.

Articles.

Every such corporation with the exception of those hereinafter specified in sub-section (c) hereof, before being authorized to file its articles, shall be required to make a showing in its articles that at least fifty per cent of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced to possession. In respect of such capital such corporations shall be classified as follows:

(a) Those having a capital of not less than one hundred thousand dollars;

(b) Those having a capital of not less than five thousand dollars, and less than one hundred thousand dollars;

The term "capital" as herein used shall be construed to include money or property whether derived from shareholders' stock, or from donors, grantors or others in trust, by deed, will or by other voluntary pledge or contribution, or any or all of such sources:

(c) Those instituted and maintained by any ecclesiastical or religious order, society, corporation or corporations, retaining control of such institution for denominational purposes.[2] Ecclesiastical Corporations.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 2, PART IV.

§492. Denominational Educational Corporations.

2. It will be observed that Act 135 of 1899, 3 C. L. 1915 (10972), relating to Ursuline academies; Act 121 of 1915, 3 C. L. 1915 (10977), relating to ecclesiastical seminaries; Act 28 of 1901, 3 C. L. 1915 (10998), relating to Evangelical Lutheran Deaf Mute Institutions, and Act 135 of 1867, 3 C. L. 1915 (10832), relating to industrial and charitable schools, have been repealed. Corporations under these acts are brought under Act 84 of 1921, automatically, and without loss of powers. (§§634, 654, 655, 656.)

PART IV, CHAPTER 2, SECTION 3

§493. Educational Corporations—Classification.

(a) Corporations of class (a) as defined in section two of this chapter shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees[3] and honors as are commonly conferred by other like colleges and universities in the United States; and the term "college" as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred. Authority.

Such colleges may also include preparatory schools as commonly understood;

Special Colleges.

(b) Corporations of class (b) as defined in section two hereof, shall have authority to establish and conduct special colleges, seminaries, academies or preparatory schools, but not general colleges or universities, as defined in subsection (a) hereof;

Schools.

(c) Corporations of class (c) shall embrace such schools, academies, or colleges, as have been heretofore founded under act number one hundred thirty-five, Public Acts of eighteen hundred ninety-nine, known thereunder as Ursuline academies; those founded under act number one hundred twenty-one, Public Acts of nineteen hundred fifteen, and known thereunder as ecclesiastical seminaries; those founded under act number twenty-eight, Public Acts of 1901, and known thereunder as "Evangelical Lutheran Deaf Mute Institutions"; those founded under act number one hundred thirty-five of the Public Acts of eighteen hundred sixty-seven, known as industrial and charitable schools; and such other schools, colleges, and institutions of like character and purpose as may be formed hereafter under this act: *Provided,* That any corporation heretofore formed under any law of this state for educational purposes shall have all of the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this chapter, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this chapter: *Provided, further,* That any corporation heretofore formed under act number

three hundred fifty-nine, Public Acts of nineteen hundred thirteen, and known thereunder as "Kindergarten Institutions," shall hereafter be classified under class (b) of sections two and four of this chapter.

Kindergarten Institutions.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART IV

§494. Power to Confer Degrees.

3. The power to confer degrees does not exist unless conferred by statute. 27 R. C. L. §12, p. 143; Townshend v. Gray, 62 Vt. 373, 8 L. R. A. 112 (1890).

PART IV, CHAPTER 2, SECTION 4

§495. Educational Corporations—Articles.

The articles of every such corporation shall clearly set forth briefly the educational system of the institution to be founded and the character of the degrees, honors, diplomas, or certificates which it proposes to grant. If a college or university, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same; and such articles shall in other respects comply with the requirements of this act. Any such corporation may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this chapter.[4]

Articles.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 2, PART IV

§496. Legislative Control.

4. The legislature has merely asked information through the articles. It might have gone as far as to establish the curriculum. Wise v. State Veterinary Board, 138 Mich. 428, 433 (1904).

PART IV, CHAPTER 2, SECTION 5

§497. Educational Corporations—Trust Property.

Gifts.

The directors or trustees of any such corporation may accept gifts, devises, legacies or bequests of personal or real property, or the principal or interest of any money or other fund, in trust for the benefit of such institution or particular faculties, departments or other special purposes thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this act respecting such boards;[5] and as to their trusteeship of property they shall be governed by the provisions of this act governing trustee corporations.[6]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART IV

5. See §203.

6. See §464.

PART IV, CHAPTER 2, SECTION 6

§498. Educational Corporations—Management.

Management.

The control of the business and secular affairs of every such corporation shall be vested in a board of directors or trustees. Such board shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employes, as the board shall determine necessary;

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;[7]

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions within this country in promoting the best interests of education.

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 2, PART IV

§499. Power to Fix Requirements of Admittance.

7. Private educational corporations may fix their own restrictions upon admittance, and may accept or reject applicants at will. Booker v. Grand Rapids Medical College, 156 Mich. 95 (1909).

PART IV, CHAPTER 2, SECTION 7

§500. Educational Corporations—Diplomas and Certificates.

Diplomas.

Every diploma, certificate of graduation, or other evidence of attendance at such institution, shall entitle the lawful recipient thereof to all the privileges and immunities which by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country:[8] *Provided,* That as to any occupation or profession regulated by statute as to the requirements and qualifications necessary to the practice thereof, no such diploma or certificate of graduation shall entitle the recipient to any such privilege or immunity where such statutory requirements or qualifications have not been complied with.

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 1, PART IV

§501. Mandamus.

8. Mandamus has been held to be a proper remedy to enforce clear legal rights wrongfully denied to a student.

18 R. C. L. §85, p. 168; State v. Milwaukee Medical College, 128 Wis. 7, 8 Ann. Cas. 407, 3 L. R. A. (N.S.) 1115 (1906). In Michigan, however, it has been held that mandamus does not lie to compel performances of obligations resting in contractual relations between a private corporation and an individual. Booker v. Grand Rapids Medical College, 156 Mich. 95 (1909); McGurrin v. Grand Rapids Township Board, 186 Mich. 475, 480 (1915).

PART IV, CHAPTER 2, SECTION 8

§502. Educational Corporations—Visitation and Reports.

Visitations.

Every such corporation shall be subject to the visitation and inspection of the Superintendent of Public Instruction, in person or through visitors or inspectors appointed by him, at such times as he may fix.[9] Said superintendent shall be empowered to ascertain and publish information upon all matters pertaining to the condition, management, instruction and practices of the corporation; and upon evidence that the property is at any time less than is required by law, or that the corporation is not otherwise complying with the provisions of this act, he shall serve notice on the corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by him, he may institute proceedings at law for the dissolution of the corporation. Such trustees shall be required, on or before the first day of December, annually, to report to the Superintendent of Public Instruction, a statement of the name of each trustee, officer, teacher and the number of students of such institution,

Statement of Property.

with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 2, PART IV

§503. Visitation.

9. The superintendent of public instruction is constituted the agent of the state for the purpose of inspection, to the end that educational corporations organized under this act shall live up to the duties and maintain the standards prescribed by law. As to visitation generally, see 27 R. C. L. §6, p. 137.

§504. Taxation of Educational Institutions.

"Such real estate as shall be owned and occupied by library, benevolent, charitable, educational and scientific institutions incorporated under the laws of this state, with the buildings and other property thereon, while occupied by them solely for the purposes for which they were incorporated" is exempt from taxation. 1 C. L. 1915 (4001); Act 331 of 1919. "The personal property of benevolent, charitable, educational and scientific institutions incorporated under the laws of this state" is likewise exempt. 1 C. L. 1915 (4003). These exceptions apply to general educational institutions, and not to private corporations for profit, giving instruction in limited and specialized branches. Parsons Business College v. City of Kalamazoo, 166 Mich. 305 (1911), distinguishing Detroit Home & Day School v. City of Detroit, 76 Mich. 521 (1889).

A corporation formed for educational purposes does not lose its right to exemption from taxation by reason of the fact that a portion of its property is used for purposes incidental only to its main purpose; or by reason of the fact that it occasionally permits use of a small portion of its property, for hire, for non-educational purposes. Webb Academy v. Grand Rapids, 209 Mich. 523 (1920).

§505. Liquidation.

Trustees of an insolvent educational corporation have power to sell its property to pay its debts, even in the absence of express, statutory authority. Knight v. Michigan Female Seminary, 152 Mich. 616 (1908).

CHAPTER 3

ECCLESIASTICAL CORPORATIONS

(References are to annotator's sections)

§506. Included and Excluded Organizations.
§507. Ecclesiastical Corporations—Articles.
§508. Provisions Respecting Polity and Government.
§509. Execution and Filing of Articles.
§510. Ecclesiastical Corporations—By-Laws.
§511. Membership of Corporation.
§512. Judicial Tribunal of Church Final.
§513. Managing Board.
§514. General Powers of Managing Trustees.
§515. Ecclesiastical Corporations—Amendment of By-Laws.
§516. Religious Societies.
§517. Ecclesiastical Corporations—Powers.
§518. Trust Funds.
§519. Conditions Subsequent.
§520. Ecclesiastical Corporations—Gifts and Bequests.
§521. Bequests.
§522. Holding Unused Real Estate.
§523. Irregularities.
§524. Estopple to Deny Incorporation.
§525. Ecclesiastical Corporations—Liberal Construction.
§526. Legislative Intent.

Subdivision 1.—General Provisions

PART IV, CHAPTER 3, SECTION 1

§506. Included and Excluded Organizations.

Organizations.

(a) The provisions of this chapter [1] shall apply to churches and societies founded upon new doctrines and beliefs as well as to those already established and practiced. The term "church" or "church corporation" as used in this chapter shall be construed to include any church, denominational unit, or church society, as the term is commonly used and understood, but shall not apply to such organizations as Sunday Schools, Epworth Leagues, Young People's

Unions, Bible classes, and similar societies, organized as subordinate to and affiliated with the parent churches;[2]

Union.

(b) Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the accomplishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as in other cases of non-profit corporations.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 3, PART IV

1. The provisions of this chapter are largely new. They embody some of the principles found in C. L. 1915 (10889), (10899), (10917), (11005), (11046), (11061), and Act 322 of 1917. While many of the prior acts are not repealed, it will be remembered that all ecclesiastical corporations hereafter organized must be formed under the present act. (§26.)

2. These organizations are to be formed under the provisions applicable to non-profit corporations. (§516.)

PART IV, CHAPTER 3, SECTION 2

§507. Ecclesiastical Corporations—Articles.

Articles.

The articles of incorporation of any such ecclesiastical corporation shall be executed by the incorporators or persons duly designated thereunto and shall follow the form prescribed in this section, and contain such further statements

Statements as the Law Directs.

as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

"We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of nineteen hundred twenty-one do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The .....church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the..... of..... County of ..... and State of Michigan;

Third, The time for which said corporation shall be created shall be.....;[3]

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the..... church in the United States of America (or other jurisdiction as the case may be,) as from time to time authorized and declared by the ..... (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question;)

Fifth, And succeeding articles, if any, (containing in brief and concise language, such other and further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed.)

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Amendment to the Statute

§508. Provisions Respecting Policy and Government.

SECTION 3. Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in this act for corporations generally.[4] Such articles may contain, among other things, specified in section two of this chapter, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corporation being so incorporated. *Such society shall not, however, by its articles of association, by-laws or system of discipline permit or encourage the teaching of immoral practices or conduct or any thing that is contrary to public policy; that violates the sanctity of the marital relations; that will prohibit any member of such society from appealing to the courts of the United States or the courts of the state for the enforcement of personal or property rights; that the by-laws and rules of discipline shall not be subject to civil law or decree; that encourages violating or disregarding any law of the United States or of this state. No provision shall be made in such by-laws or articles of association permitting such corporation to receive, accept, acquire or endeavor to secure property through fraud, misrepresentation or undue influence under the guise of religious teaching or discipline; that will permit any individual as such and not as an official of said society to acquire and hold the property thereof in his own name or which permits any official to dictate and construe the rules of discipline or by-laws of such society without the approval of the directing board thereof or require that such by-laws and rules be approved by him before becoming effective. Whenever proceedings in the nature of quo warranto have been or may hereafter be brought against any association or corporation organized or doing business in this state as a religious or ecclesiastical body, and when it shall appear in the information that such association or corporation has exceeded its powers, misused its franchises and privileges, committed any fraud or deception, has been guilty of any misapplication of funds or property, has secured property or donations through fraud or misrepresentation, has acquired or used property illegally, has been guilty or propagating or teaching immoral or vicious principles or doctrines or has otherwise violated the laws of this state or the United States, the attorney general may,*

Done at the ..... of....., County of..... and State of Michigan, this..... day of....., 19.... Acknowledgment.

(Signatures) (Residences)

....

(Acknowledgments.)
(Consent if any required.)
(Certificates, if any.)

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 3, PART IV

3. The corporate existence may be perpetual.

PART IV, CHAPTER 3, SECTION 3

§508. Provisions Respecting Polity and Government.

Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in this act for corporations generally.[4] Such articles may contain, among other things, specified in section two of this chapter, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corporation being so incorporated. Execution and Filing of Articles.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 3, PART IV

§509. Execution and Filing of Articles.

4. The articles are to be prepared and executed in triplicate. The three copies, so executed, are to be sent to

the Secretary of State, together with a filing fee of $5 and a franchise fee of $10. (See §§675, 676.)

PART IV, CHAPTER 3, SECTION 4

§510. Ecclesiastical Corporations—By-Laws.

By-Laws.

Such church corporations shall have authority to adopt by-laws prescribing the qualifications of members;[5] the manner in which they shall be admitted, suspended or expelled;[6] the number and official titles of the person or persons who control the temporal affairs of the corporation;[7] their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum; how far the corporation shall be subject to the approval or control of any other corporation or higher church body which corporation or body shall be named; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; and such other by-laws as may be deemed necessary for the management of the affairs of such corporation.[8] The by-laws may also prescribe how the same may be altered, amended or repealed.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 3, PART IV

§511. Membership of Corporation.

5. In the absence of by-laws forbidding it, one may be a member, or even an officer, of the corporation, without being a member of the church. Wilson v. Livingstone, 99 Mich. 594, 605 (1894); Hardin v. Baptist Church, 51 Mich.

in such proceedings, or in separate proceedings, apply to the same or any other circuit court for a receiver for the property and effects of such corporation or association, and in all such cases the court shall appoint a receiver in like manner and with like effect and powers as in insolvency proceedings as provided for in the judicature act. All persons having any interest in the property of such corporation or who have conveyed, donated or contributed substantially to the funds or property of such corporation, may intervene in such proceeding for the purpose of obtaining restitution of such property or their just share thereof, and shall be entitled to prove their claims thereunder according to the rules and practice of the court. Any property, good or money of such corporation, or held in trust by or for it, and not claimed or distributed to the creditors or other claimants whose claims have been duly proved in the proceedings herein authorized, shall escheat to the people of the State of Michigan and upon the winding up of the receivership shall be conveyed to the state board of escheats, and shall be disposed of by such board as now provided by law for other escheated property.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 77, approved April 25, '23, and ordered to take immediate effect.

137 (1883). The temporal affairs of the church rest with the corporation, but the religious affairs rest with the church. Buettner v. Circuit Judge, 100 Mich. 179 (1894).

That the church has power to prescribe qualifications of membership, see Mazurkiewicz v. St. Albertus Aid Society, 127 Mich. 145 (1901); Bretzloff v. Evangelical Lutheran St. John's Sick Benefit Society, 125 Mich. 39 (1900); also Donville v. Farmers' Mutual Ins. Co., 113 Mich. 158 (1897); Van Poucke v. St. Vincent DePaul Society, 63 Mich. 378 (1886).

§512. Judicial Tribunal of Church Final.

6. "It is the settled law of this country that the judgments of the judicial tribunals of church organizations upon matters of faith, discipline and general polity and tenets of the church are binding upon the civil courts." Bear v. Halsey, 98 Mich. 279, 288 (1893). See also Attorney General v. Geerlings, 55 Mich. 562 (1885); Attorney General v. Keppal, 55 Mich. 567 (1885).

Mandamus does not lie to reinstate a member who has been irregularly expelled, when such reinstatement would inflict injury upon the corporation from which he is justly subject to expulsion. Meister v. Anshei Chesed etc., Congregation, 37 Mich. 542 (1877).

§513. Managing Board.

7. The managing trustees of a church corporation "are trustees in the same sense, and no other, in which directors of any private corporation are trustees." Bruce v. Central M. E. Church, 147 Mich. 230, 243 (1907).

§514. General Powers of Managing Trustees.

8. Except as restricted by governing statutes or by-laws, the power of trustees of ecclesiastical corporations do not

differ from the powers of like officers in other corporations. Bruce v. Central M. E. Church, 147 Mich. 230, 243 (1907). They may make contracts. Cicotte v. St. Ann's Church, 60 Mich. 552 (1886). Or their contracts may be ratified, if not originally authorized. Scott v. Methodist Church of Jackson, 50 Mich. 528, 532 (1883); Trustees v. Rechlin, 49 Mich. 516 (1883). They may mortgage or sell the personal property of the church. Walrath v. Campbell, 28 Mich. 110, 119 (1873); also §517 post. The trustees are custodians of the church property. Rechter v. Kabat, 114 Mich. 575 (1893). (See §517.)

PART IV, CHAPTER 3, SECTION 5

§515. Ecclesiastical Corporations—Amendment of By-Laws.

Amendment of Articles.

The articles of any such corporation may be amended at any meeting of the members of the corporation called for that purpose pursuant to the by-laws, by the affirmative vote of a majority of the members entitled to vote thereon present at such meeting, unless a different majority is required by the rules of discipline or by the church policy in any particular case, and it shall be the duty of the person or persons controlling the temporal affairs of the corporation to make, sign and acknowledge in the same manner that the original articles were made, signed and acknowledged, triplicate copies of a certificate, containing the name of the corporation, a copy of the call for the meeting at which the amendment was made, the number of members present at such meeting, the number of members voting in favor of the amendment and a copy of the amendment; and such certificate of amendment shall be filed in the same manner that the original

articles were filed, and upon such filing the amendments shall be effective: *Provided,* That where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs, and discipline of the particular church body concerned.

Filing Amended Articles.

PART IV, CHAPTER 3, SECTION 6

§516. Religious Societies.

In the case of incorporating a Sunday school society, or other special religious society or union, not being a church, but having for its object the teaching of religious principles, or the associating together for religious work, the incorporators shall subscribe articles similar to those prescribed for non-profit corporations generally, which articles shall also contain any special conditions or distinguishing principles upon which such corporation is founded, and, if connected with some organized church, the name of the church and a statement of the extent to which such church may exercise superintendence over the affairs of or discipline of the members of such Sunday school or other corporation. The corporations referred to in this section as Sunday schools or special religious societies, shall have all the rights, privileges, immunities and powers granted by this act to non-profit corpo-

Subsidiary Organizations.

Rights of Non-Profit Corporations.

rations generally in their secular affairs; and in their religious affairs they shall be governed solely by their articles and by-laws, and the system of discipline therein adopted.

PART IV, CHAPTER 3, SECTION 7

§517. Ecclesiastical Corporations—Powers.

Holding Property.

Where no other special provision inconsistent herewith is made in this chapter, every such church corporation shall have power to acquire, hold, sell and convey property, both real and personal for the general purposes of such corporation and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation.[9] The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of the corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. It may sell, mortgage and dispose of its personal property; and may mortgage and incumber its real estate. It may acquire real estate by gift, purchase or devise for the purpose of having and holding land and buildings for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds and church society buildings and grounds, and may sell or mortgage such real estate; shall have and enjoy all the rights, privileges and immunities, so far as any church

Mortgage.

Amendment to the Statute

§517. Ecclesiastical Corporations—Powers.

SECTION 7. Where no other special provision inconsistent herewith is made in this chapter, every such church corporation shall have power to acquire, hold, sell and convey property, both real and personal, for the general purposes of such corporation, and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, *except that acquired through fraud, misrepresentation, undue influence or other unlawful means* and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation. [9] The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of the corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. It may sell, mortgage and dispose of its personal property; and may mortgage and incumber its real estate. It may acquire real estate by gift, purchase or devise for the purpose of having and holding land and buildings for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds and church society buildings and grounds, and may sell or mortgage such real estate; shall have and enjoy all the rights, privileges and immunities, so far as any church cemetery owned by it is concerned, which corporations organized to establish rural cemeteries have and enjoy under the laws of this state: *Provided*, That the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, article or by-laws pertaining to each such corporation: And *provided further*, That every such church corporation insofar as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this act and governed by the provisions of chapter one of this part, excepting as herein otherwise provided.

This act is ordered to take immediate effect.

Approved April 25, 1923.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 77, approved April 25, '23, and ordered to take immediate effect.

Rural Cemeteries.

cemetery owned by it is concerned, which corporations organized to establish rural cemeteries have and enjoy under the laws of this state: *Provided,* That the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws pertaining to each such corporation: And *provided further,* That every such church corporation in so far as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this act and governed by the provisions of chapter one of this part, excepting as herein otherwise provided.

Trust Property.

COMMENTARIES ON THE SEVENTH SECTION OF CHAPTER 3, PART IV

§518. Trust Funds.

9. A trust fund cannot be diverted to purposes other than those for which it was created. Eis v. Croze, 149 Mich. 62 (1907). Devolution of title and management upon a new trustee does not breach the grant. Puffer v. Clark, 202 Mich. 169, 200 (1918). Trusts are enforcible in this state, as at common law, provided they are fully and clearly expressed in the instrument. White v. Rice, 112 Mich. 403, 409 (1897).

§519. Conditions Subsequent.

Conditions Subsequent are strictly construed. Adams v. Baptist Church of St. Charles, 148 Mich. 140, 144 (1907); Calkins v. Smith's Estate, 41 Mich. 409 (1879). "The law

favors an absolute rather than a defeasible estate; a vested rather than a contingent one; a primary rather than a secondary intent." Carty v. Fish, 87 Mich. 48 (1891).

PART IV, CHAPTER 3, SECTION 8

§520. Ecclesiastical Corporations—Gifts and Bequests.

Gifts and Bequests.

Any religious society or church incorporated under any law of this state may receive, hold, and use gifts or bequests[10] of money or other property for any special religious, benevolent, charitable, educational, social or other purpose, enterprise or project connected with such church or society or may receive such gifts or bequests to be by such society or church invested in whole or in part in the name of such society or church, the net income therefrom to be by such society or church used for any of said purposes, according to the terms of such gifts or bequests. All real estate so received and not used by such society or church for any of such purposes shall by such society or church be sold within ten years and the proceeds therefrom shall be used or invested according to the terms of such gift or bequest.[11] All such investments made by such society or church shall be in such real estate, mortgages or bonds, as may at the time be authorized by the laws of this state or by the laws of the United States of America for the investment of savings deposits of incorporated banks. The trustees, vestrymen, consistory, or other governing body of any religious society incorporated under the laws of this state, may in their corporate name receive gifts and bequests of money for investment upon bond and mortgage when the interest of such investment is to be applied in payment or part payment of the salary of the

Investments.

minister, priest, rector, parson or clergyman of such religious society: *Provided,* That sums of money, mortgages or investments so held by any such society shall be invested by the trustees, vestrymen, consistory, or other governing body, in their corporate name, upon bonds secured by mortgage upon unincumbered real estate, worth at least double the amount loaned thereon.[12]

Payment of Salary.

COMMENTARIES ON THE EIGHTH SECTION OF CHAPTER 3, PART IV

§521. Bequests.

10. Power to receive bequests existed at common law. Estate of Tichnor, 13 Mich. 44, 45 (1864). (See §520.) A bequest, to be valid, must be to a beneficiary made certain by the language of the will. Stopel v. Satterthwaite, 162 Mich. 457, 498 (1910).

§522. Holding Unused Real Estate.

11. This provision follows the constitutional requirement that, "No corporation shall hold any real estate for a longer period than ten years, except such real estate shall be actually occupied by such corporation in the exercise of its franchises." Mich. Const. 1908, Act XII, §5. This constitutional provision can be enforced by the state only. German Corporation v. Negaunee German Aid Society, 172 Mich. 650, 660 (1912); Pere Marquette R. Co. v. Graham, 136 Mich. 444, 450 (1904).

§523. Irregularities.

12. Courts will not interfere to correct unsubstantial irregularities in the proceedings of a religious society. Peo-

ple v. Nappa, 80 Mich. 488 (1890); Id. 89 Mich. 232 (1891); Vrooman v. Michie, 69 Mich. 44 (1888).

§524. Estoppel to Deny Incorporation.

Parties who have dealt with a religious society as a corporation are estopped to deny that it is duly incorporated. Stofflet v. Strome, 101 Mich. 197 (1894). But estopples do not arise from ambiguous facts. Fredenburg v. Lyon M. E. Church, 37 Mich. 478 (1897).

PART IV, CHAPTER 3, SECTION 9

§525. Ecclesiastical Corporations—Liberal Construction.

Saving Clause.

Nothing in this chapter contained shall be construed as limiting or restricting the rights, powers, privileges, immunities or the practices of any church heretofore established or incorporated under any law of this state; nor as requiring any such church to alter or change any rule of discipline, custom or usage in respect of its church policy or government; nor as interfering with the lawful acquisition, use or disposition of any property now owned or held by any such church corporation. The provisions of this chapter shall be liberally construed in the interests of religion and morality.[13]

COMMENTARIES ON THE NINTH SECTION OF CHAPTER 3, PART IV

§526. Legislative Intent.

13. "The great fundamental rule in construing statutes is to ascertain and give effect to the intention of the legis-

lature. This intention, however, must be the intention as expressed in the statute, and where the meaning of the language used is plain, it must be given effect by the courts, or they would be assuming legislative authority." 36 Cyc. 1106. See also Detroit & Mackinaw R. Co. v. Alpena Circuit Judge, 152 Mich. 201 (1908). The legislative intent must prevail over the literal sense of the language employed, if there be conflict and the intent is manifest. Stambaugh Township v. Iron County Treasurer, 153 Mich. 104, 107 (1908).

PART V

FOREIGN CORPORATIONS, REPORTS AND SCHEDULES OF REPEALS

CHAPTER 1

FOREIGN CORPORATIONS

(References are to annotator's sections)

§527. Exclusion, and Terms of Domestication.
§528. Power of State to Exclude Foreign Corporations.
§529. Federal Limitations on State Power.
§530. The Commerce Clause.
§531. The Due Process of Law Clause.
§532. The Equal Privilege Clause.
§533. The Equal Protection Clause.
§534. The Contract Clause.
§535. Federal Jurisdiction.
§536. Federal Instrumentalities.
§537. "Carry On Its Business."
§538. Permissible Transactions.
§539. Fees for Domestication of Foreign Corporations.
§540. Foreign Corporations—Certificate of Authority.
§541. Purposes Must Accord with State Policy.
§542. Privileges and Duties under Local Law.
§543. Revocation of Authority.
§544. Dual Control.
§545. Foreign Corporations—Other Requirements and Penalties.
§546. Denial of Contractual Capacity.
§547. Non-Domestication Must Be Pleaded.
§548. Foreign Corporations—Agents, Penalties.
§549. Criminal Liability of Agents.
§550. Service of Process upon Foreign Corporations.
§551. Foreign Corporations—Inclusions and Exclusions.
§552. Licenses to Insurance Companies.

PART V, CHAPTER 1, SECTION 1

§527. Exclusion, and Terms of Domestication.

Domestication.

It shall be unlawful[1] for any corporation organized under the laws of any state, district or

territory of the United States, except the State of Michigan, or of any foreign country, to carry on its business[2] in this state, until it shall have procured from the Secretary of State of this state a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file in the office of the Secretary of State a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this state to accept service of process on behalf of said corporation, and shall pay to the Secretary of State the filing, and franchise fees prescribed by law.[3] Such corporation, by its president, secretary, treasurer, and superintendent, or any two of them, shall make and file with the Secretary of State a statement duly sworn to by at least two of such officers, in such form as the Secretary of State may prescribe,[4] containing the following facts:

Michigan, State of, Excepted.

Contents of Statement.

First, The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers;

Second, The location of its principal office and the principal place of business in Michigan, and the names and addresses of the officers or agents of the company in charge of its business in Michigan;

Third, The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trademarks, formulas and good will;

Fourth, The value of the property owned and used in Michigan and where situated;

Amount of Business Transacted.

Fifth, The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan;

Sixth, Such other facts bearing on the matter as the Secretary of State may require, including a statement of the particular purpose, or the particular kind of business for which the company desires admission to this state. From the papers so filed and the facts so reported and any other facts coming to his knowledge bearing upon the question, the Secretary of State shall compute and determine the amount of the franchise fee to be paid by such corporation before its admission to this state, as prescribed by law. Any such corporation shall have the right, on application, to be heard by the Secretary of State touching the matter of the determination of such franchise fee. Any corporation aggrieved by the decision of the Secretary of State, may, within ten days, appeal to a board of appeal, consisting of the Auditor General, State Treasurer and Attorney General, whose decision in the matter shall be final.[5]

Franchise Fee.

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 1, PART V

§528. Power of State to Exclude Foreign Corporations.

1. The state has plenary power to admit foreign corporations without restrictions, or to admit them upon conditions, or to admit some and to exclude others, or to exclude all, except as this power is limited by the federal constitution. Paul v. Virginia, 8 Wall. (U.S.) 168, 19 L. ed. 357, 360 (1869); New York Mortgage Co. v. Secretary of State, 150 Mich. 197, 202 (1907); Pollock v. German Fire

Ins. Co., 132 Mich. 225, 227 (1903); Moline Plow Co. v. Wilkinson, 105 Mich. 57, 59 (1895); First National Bank of Detroit v. Burch, 80 Mich. 242, 247 (1890); Hartford Fire Ins. Co. v. Raymond, 70 Mich. 485, 501 (1888); Home Ins. Co. v. Davis, 29 Mich. 238, 240 (1874); Thompson v. Waters, 25 Mich. 214, 220 (1872). "The conditions imposed may be reasonable or unreasonable; they are absolutely within the discretion of the legislature." Hartford Ins. Co. v. Raymond, 70 Mich. 485, 501 (1888). See also People v. Howard, 50 Mich. 239, 248 (1883); American Ins. Co. v. Stay, 41 Mich. 385, 402 (1879); People v. Judge of the Jackson Circuit Court, 21 Mich. 577, 579 (1870).

§529. Federal Limitations on State Power.

The power of the state to burden or exclude foreign corporations is subject, of course, to the provisions of the constitution of the United States. The provisions most frequently invoked are

(a) The "commerce clause,"
(b) The "due process clause,"
(c) The "equal privilege clause,"
(d) The "equal protection clause,"
(e) The "contract clause,"
(f) Inviolability of federal jurisdiction,
(g) Immunity of federal instrumentalities from state interference.

§530. The Commerce Clause.

(a) Section 8 of Article I of the federal constitution provides, that "Congress shall have power . . . . . to regulate commerce . . . among the several states. . . . ." The doctrine is stated by Mr. Justice Fuller as follows: "We have repeatedly held that no state has a

right to lay a tax on interstate commerce in any form, whether by way of duties laid on transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on, for the reason that such taxation is a burden on that commerce and amounts to a regulation of it, which belongs solely to congress." Lyng v. Michigan, 135 U. S. 161, 34 L. ed. 150, 153 (1890), reversing People v. Lyng, 74 Mich. 579 (1889); McCall v. California, 136 U. S. 104, 34 L. ed. 391 (1890); Neyens v. Worthington, 150 Mich. 580, 587 (1908). Thus, an interstate railroad corporation may establish an office in this state for the purpose of soliciting freight and passenger business without obtaining a certificate of authority from this state. Report Att'y Gen. (Fellows) 1914, p. 154. See also E. A. Lange Medical Co. v. Brace, 186 Mich. 453, 459 (1915); Commercial Milling Co. v. Western Union Telegraph Co., 151 Mich. 425 (1908). "The question of what is interstate commerce is a federal question, and the federal decisions are controlling." Standard Fashion Co. v. Cummings, 187 Mich. 196, 203 (1915).

§531. The Due Process of Law Clause.

(b) The fourteenth amendment to the federal constitution provides that no state shall "deprive any person of life, liberty or property without due process of law."

Due process of law "means such an exercise of governmental power as is sanctioned by the settled maxims of law, under such safeguards for the protection of individual rights as those maxims prescribe." People v. Dickerson, 164 Mich. 148, 152 (1910). The term embraces executive and administrative process, as well as judicial process. Weimer v. Bunbury, 30 Mich. 200, 210 (1874).

"The authority of a state to impose conditions upon the

privilege of doing business by a foreign corporation is well established, and is not affected by the fourteenth amendment to the federal constitution." Attorney General v. A. Booth & Co., 143 Mich. 89, 102 (1906).

But foreign corporations are persons, within the meaning of the due process clause, and are entitled to its protection. 8 Fletcher Cyc. Corp. §5758, p. 9484. Thus a state rate law, confiscatory in effect, imposed upon a foreign railroad company owning a large amount of real estate within the state, was held to offend the due process clause of the federal constitution. Chicago & Northwestern R. Co. v. Dey, 35 Fed. 866, 1 L. R. A. 744 (1888). The opinion of Judge Brewer, in the case last cited, contains the following cogent observation:

"For a government, whether that government be a single sovereign or one of the majority, to say to an individual who has invested his means in so laudable an enterprise as the construction of a railroad, one which tends so much to the wealth and prosperity of the community, that if he finds the rates imposed will cause him to do business at a loss, he may quit business and abandon that road, is the very irony of despotism. Apples of Sodom were fruit of joy in comparison." Compare with Erie Railroad Co. v. Board of Public Utility Commissioners, 65 L. ed. 199 (advance sheets) decided January 3, 1921, where it is said: "If the burdens imposed are so great that the road cannot run at a profit, it can stop, whatever misfortunes the stopping may produce." Citing, Brooks-Scanlon Co. v. Railroad Commission, 251 U. S. 396, 64 L. ed. 323.

§532. The Equal Privilege Clause.

(c) A corporation is not a citizen within the meaning of article IV, section 2 of the federal constitution, which provides that, "The citizens of each state shall be entitled

to all privileges and immunities of citizens in the several states," nor within that portion of the 14th amendment providing that, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States." Pollock v. German Fire-Ins. Co., 132 Mich. 225 (1903); Moline Plow Co., v. Wilkinson, 105 Mich. 57, 59 (1895); Hartford Fire Ins. Co. v. Raymond, 70 Mich. 485, 502 (1888); State Treasurer v. Auditor General, 46 Mich. 224 (1881); Home Ins. Co. v. Davis, 29 Mich. 238, 239 (1874); 8 Fletcher Cyc. Corp. §5754, p. 9450; 1 Thomp. Corp. (2 ed.) p. 18.

§533. The Equal Protection Clause.

(d) Foreign corporations are within the protection of the provisions of the 14th amendment providing, that no state shall "deny to any person within its jurisdiction the equal protection of the laws." This does not prevent exclusion, nor the imposition of conditions precedent upon admittance; but, after a foreign corporation has been admitted to the state, its burdens must not be made more onerous than those of domestic corporations of the same class and character, under like circumstances. American Smelting & Refining Co. v. Colorado, 204 U. S. 103, 51 L ed. 393 (1907); Southern R. Co. v. Greene, 216 U. S. 400, 54 L. ed. 536 (1910). See also St. Louis Southwestern R. Co. v. Arkansas, 235 U. S. 350, 59 L. ed. 265 (1914).

§534. The Contract Clause.

(e) Section 10 of article 1 provides that, "No state shall . . . . pass any . . . . law impairing the obligation of contracts." "Under this provision, if a state has permitted a foreign corporation to make contracts or acquire property within its limits, a statute subsequently

enacted cannot impair the corporation's right to enforce such contracts or deprive it of its right to the property." 8 Fletcher Cyc. Corp. §5757, p. 9470; American Smelting & Refining Co. v. Colorado, 204 U. S. 103, 51 L. ed. 393 (1907); Home of the Friendless v. Rouse, 75 U. S. (8 Wall) 430, 19 L. ed. 495 (1869); Trustees of Dartmouth College v. Woodward, 4 Wheaton 519, 4 L. ed. 629 (1819). "Manifestly, the power to impose conditions upon foreign corporations cannot be exercised to discharge the citizens of the state from their contract obligations." Bedford v. Eastern Building & Loan Association, 181 U. S. 227, 45 L. ed. 834, 844 (1901). But exercise by the state of a reserve right to declare a license forfeited, violates no contract for the right is a part of the contract of admittance. Waters-Pierce Oil Co. v. Texas, 177 U. S. 28, 44 L. ed. 657 (1900).

§535. Federal Jurisdiction.

(f) The right to resort to the federal courts is a constitutional privilege. A statute requiring surrender of this right by a foreign corporation as a condition precedent to admittance to the state is void. Western Union Telegraph Co. v. Kansas, 216 U. S. 1, 54 L. ed. 355 (1910); Herndon v. Chicago, Rock Island & Pacific R. Co. 218 U. S. 135, 54 L. ed. 970, 978 (1910). It was formerly held that a state may constitutionally enact a statute which provides, that the license of a foreign corporation may be withdrawn if such corporation exercises its right to resort to the federal courts. Security Mutual Fire Ins. Co. v. Prewitt, 202 U. S. 246, 50 L. ed. 1013, 1018 (1906); Doyle v. Continental Ins. Co., 94 U. S. 535, 24 L. ed. 148. These cases have been recently overruled. It is now held that the states are powerless to prevent resort to the federal courts. Terral

v. Burke Construction Co., 42 Sup. Ct. 188, 66 L. ed. Adv. Opp. 223 (1922).

§536. Federal Instrumentalities.

(g) Mr. Chief Justice Marshall announced the doctrine which exempts federal instrumentalities from state interference or control. He said: "The sovereignty of a state extends to everything which exists by its own authority, or is introduced by its permission; but does it extend to those means which are employed by congress to carry into execution—powers conferred on that body by the people of the United States? We think it demonstrable that it does not. Those powers are not given by the people to a single state. They are given by the people of the United States to a government whose laws, made in pursuance of the constitution, are declared to be supreme. Consequently, the people of a single state cannot confer a sovereignty which will extend over them." M'Culloch v. Maryland, 4 Wheat. 314, 4 L. ed. 579, 607 (1919). See also Williams v. Talladega, 226 U. S. 404, 57 L. ed. 275 (1912); Horn Silver Mining Co. v. New York, 143 U. S. 305, 36 L. ed. 164 (1892); Pembona Consolidated Silver Mining & Milling Co. v. Pennsylvania, 125 U. S. 181, 31 L. ed. 650 (1883). This doctrine is not within any express provision of the federal constitution, and is limited by the principle that state legislation which does not impair the capacity of federal instrumentalities to exercise their functions is not prohibited. Union Pacific R. Co. v. Peniston, 85 U. S. (18 Wall) 50, 21 L. ed 787 (1873). "But mere contracts between private corporations and the United States do not necessarily render the former essential governmental agencies, and confer freedom from state control." Fidelity & Deposit Co. of Maryland v. Pennsylvania, 240 U. S. 319, 60 L. ed. 664 (1916); Baltimore Shipbuilding & Dry Dock Co., 195 U. S. 375, 49 L. ed. 242 (1904).

§537. "Carry on Its Business."

2. The statute seeks to prevent *work* in this state by foreign corporations which have not complied with the state laws. Imperial Curtain Co. v. Jacob, 163 Mich. 72, 77 (1910). The following mentioned activities have been held to amount to carrying on business in Michigan:

(a) An indivisible contract for the sale of an elevator and the repair of another elevator. Houghton Elevator & Machine Co. v. Detroit Candy Co., 156 Mich. 25 (1909).

(b) Sale of electric lamps and lighting supplies under a contract requiring the vendor to correct defects in labor and material, to employ help to install and maintain, to introduce the goods, to furnish material and labor, and to maintain an office in this state. Nernst Lamp Co. v. Conrad, 165 Mich. 604 (1911).

(c) Placing and maintaining an advertisement on a theater drop curtain for a period of years. Imperial Curtain Co. v. Jacob, 163 Mich. 72 (1910).

(d) Sale of goods from trunks carried by salesmen. Despres, Bridges & Noel v. Zierleyn, 163 Mich. 399 (1910). Sale of goods from stock on hand. People v. Watters, 192 Mich. 462 (1916).

(e) Sale of goods upon commission by a resident agent, where title is reserved in a foreign corporation. E. A. Lange Medical Co. v. Brace, 186 Mich. 453 (1915). See also Neyens v. Worthington, 150 Mich. 580 (1908).

(f) Establishing an office in this state in furtherance of a foreign land scheme. Flint v. LeHeup, 199 Mich. 41 (1917).

(g) A contract for the term of one year with a resident agent, upon a commission basis, to distribute to Michigan exhibitors motion picture films belonging to a foreign corporation, whose compensation was a percentage of gross

receipts of the exhibitors. Rex Beach Co. v. Garson Productions, 209 Mich. 692 (1920).

(h) Installation of goods where such installation is not shown to have been necessary to their sale. Power Specialty Co. v. Michigan Power Co., 190 Mich. 699 (1916); Decorators Supply Co. v. Chaussee, 211 Mich. 302 (1920); B. F. Sturtevant Co. v. Adolph Leitelt Iron Works, 196 Mich. 552 (1917); Irvine & Meier v. Wienner, 212 Mich. 199 (1920).

(i) Contract to construct and equip a factory in this state from materials obtained from within and without the state. Hastings Industrial Co. v. Moran, 143 Mich. 679 (1906).

§538. Permissible Transactions.

The following transactions have been held permissible without license:

(a) Payment of a debt. Tidey v. Kent Circuit Judge, 179 Mich. 580, 583 (1914).

(b) Installation of goods sold in the course of interstate commerce where some "intrinsic or peculiar quality, or inherent complexity makes installation by the seller a necessary part of the contract of sale, essential to the accomplishment of the interstate transaction." Power Specialty Co. v. Michigan Power Co., 190 Mich. 699 (1916); Browning v. City of Waycross, 233 U. S. 16, 58 L. ed. 828 (1916); Caldwell v. North Carolina, 187 U. S. 622, 47 L. ed. 336 (1903).

(c) Single, isolated business transactions, involving work as a minor incident, if at all, and without any purpose to carry on further business in this state. Neyens v. Worthington, 150 Mich. 580, 587 (1908); Vulcan Steam Shovel Co. v. Flanders, 205 Fed. 102 (1913). Acting as trustee under one trust mortgage and paying interest cou-

pons on bonds secured thereby, does not amount to carrying on business. Report Attorney General (Oren) 1903, p. 67; Report Attorney General (Bird) 1909, p. 67. But where the doing of work is a material, fundamental object of the contract, a single transaction constitutes carrying on business. Imperial Curtain Co. v. Jacob, 163 Mich. 72, 78 (1910); Houghton Elevator Co. v. Detroit Candy Co., 156 Mich. 25 (1909); Rough v. Breitung, 117 Mich. 48, 56 (1898).

(d) Orders given in this state, to be accepted in a foreign state, for goods to be supplied in the regular course of interstate commerce. Fifth Library Association v. Hastie, 155 Mich. 56 (1908); Pittsburgh Coal Co. v. Northy, 158 Mich. 530 (1909).

(e) Orders taken by traveling salesmen carrying no stock, except samples, delivery to be made from another state in the course of interstate commerce. Despres, Bridges & Noel Co. v. Zierleyn, 163 Mich. 399 (1910); Coit & Co. v. Sutton, 102 Mich. 324 (1894); M. I. Wilcox Cordage & Supply Co. v. Mosher, 114 Mich. 64 (1897); People v. Smith, 147 Mich. 391, 397 (1907).

(f) Transactions within the field of interstate commerce. This is mentioned to embrace all matters not included in the special instances mentioned in b. d. and e. The term interstate commerce embraces commercial intercourse in all its branches. 8 Fletcher Cyc. Corp. §5762, 9509.

(g) Replevin. Hallet & Davis Piano Co. v. Droste, 213 Mich. 381 (1921); Rex Beach Co. v. Garson Productions, 209 Mich. 642 (1920).

§539. Fees for Domestication of Foreign Corporations.

3. Act 85 of 1921, provides a new fee schedule. (See §§104, 105, 676, 677.)

4. For form of application see §723.

5. Detroit Mortgage Corporation v. Secretary of State, 211 Michigan, 320 (1920).

PART V, CHAPTER 1, SECTION 2

§540. Foreign Corporations—Certificate of Authority.

Authority.

When such corporation has fully complied with the provisions of this act, the Secretary of State may issue to such corporation a certificate of authority to carry on such business in this state for one year, and from year to year thereafter during the period of its corporate existence so long as the said corporation continues to pay its franchise fee and to otherwise comply with the laws of this state: *Provided,* That no such foreign corporation shall be permitted to transact business in this state, unless it be incorporated in whole or in part for the purpose or object for which a corporation may be formed under the laws of Michigan,[6] and then only for such purpose or object. The Secretary of State shall in the certificate which he issues state the act or section of this act containing such purposes and such corporation shall have all the powers, rights, and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act or section;[7] and the officers and directors of every such corporation shall be subject to all such requirements and duties as are imposed upon officers and directors of domestic corporations organized under such act or section, and shall be subject to the same penalties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of domestic corporations organized thereunder:[8]

Purposes.

Provided, That the carrying on in this state by such corporation of business for which it has not been so admitted or failure to fully comply with the requirements of the laws of this state shall be sufficient cause for revoking the certificate of authority to do business in this state, and the Secretary of State may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation.[9] All foreign corporations, including also common carriers, heretofore or hereafter admitted to this state shall be deemed to be admitted under and be subject to the provisions of this act: *Provided, however,* That nothing in this chapter contained shall be construed as exempting any foreign corporation from complying with any law bringing it under the jurisdiction of the Michigan Public Utilities Commission for any purpose.[10]

Abuse of Privilege.

Revocation.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 1, PART V

§541. Purposes Must Accord with State Policy.

6. "The matter of admitting foreign corporations to do business in a state is absolutely within the discretion of the legislature. It is granted, not as a matter of right, but as a matter of comity. . . . This comity is never extended by states where the existence of the corporation or the exercise of its powers are prejudicial to their interests, or repugnant to their policy." New York Mortgage Co. v. Secretary of State, 150 Mich. 197, 202 (1907). Thus it has been held that a foreign corporation having multiple purposes could be admitted to carry on in this state no more

purposes than were permitted to domestic corporations under Michigan statutes. Report Attorney General (Bird) 1909, p. 142; Report Attorney General (Kuhn) 1911, p. 214; American Telephone & Telegraph Co. v. Secretary of State, 159 Mich. 194 (1909); American Automobile Insurance Co. v. Commissioner of Insurance, 174 Mich. 295 (1913). A foreign trust company is not eligible to admittance. Report Attorney General (Bird) 1909, p. 67.

Where the state has placed the organization and management of certain domestic corporations—such as banks and trust companies—under special departmental supervision and control, a foreign corporation will not be admitted to exercise like powers. New York Mortgage Co. v. Secretary of State, 150 Mich. 197, 202 (1907); Report Attorney General (Bird) 1909, p. 67.

A foreign corporation will not be permitted to transact business, or to employ methods, obnoxious to local laws. Attorney General v. National Cash Register Co., 182 Mich. 99, 104 (1914); Attorney General v. A. Booth & Co., 143 Mich. 89 (1906).

A foreign public utilities corporation must have the approval of the Michigan Public Utilities Commission before it will be granted a certificate of authority to transact business in this state. Peninsular Power Co. v. Secretary of State, 169 Mich. 595 (1912).

§542. Privileges and Duties Under Local Law.

7. A foreign corporation remains foreign. Security Savings Bank & Trust Co. v. St. Louis Chemical Co., 172 Mich. 74 (1912); Report Attorney General (Bird) 1909, p. 202.

After domestication foreign corporations are entitled to, and subject to, the remedies available to, and against, domestic corporations. Yund v. Excelsior Wrapper Co., 185

Mich. 143, 174 (1915); Showen v. J. L. Owens Co., 158 Mich. 321, 333 (1909); Stack v. Detour Lumber Co., 151 Mich. 21, 29 (1908); Isle Royale Land Corporation v. Osmun, 76 Mich. 162 (1889); Republic Motor Truck Co. v. The Buda Co., 212 Mich. 55 (1920).

8. See §540.

§543. Revocation of Authority.

9. Where a foreign corporation fails to file its reports as required by our statute, its authority to carry on business in this state may be revoked. Report Attorney General (Bird) 1909, p. 59, 202. But the secretary of state may not revoke such authority upon the ground that a foreign corporation is engaged in an unlawful monopoly. This is a judicial question. Attorney General v. National Cash Register Co., 182 Mich. 99 (1914); Report Attorney General (Bird) 1909, p. 183; Republic Motor Truck Co. v. The Buda Co., 212 Mich. 55 (1920).

§544. Dual Control.

10. Where a corporation is of such a class that its eligibility must be passed upon by the Michigan Public Utilities Commission, both that commission and the secretary of state must be satisfied. Peninsular Power Co. v. Secretary of State, 169 Mich. 595 (1912).

PART V. CHAPTER 1, SECTION 3

§545. Foreign Corporations—Other Requirements and Penalties.

Increase of Capital.

Every corporation which has paid a franchise fee and been admitted to do business in this state which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used

Time for Filing. and business done in Michigan, shall within thirty days after such increase file an additional statement in respect thereto with the Secretary of State and pay such additional franchise fee on account thereof as may be prescribed by law. And any such corporation shall at any time when requested by the Secretary of State, file an additional statement under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this chapter which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the State of Michigan in any court of competent jurisdiction.[11] No foreign corporation shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of the laws of this state with respect thereto, and at the time holds an unrevoked certificate to that effect from the Secretary of State.[12] No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filed notice of appointment of some other person in this state as such agent.

Penalty.

Removal of Agent.

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 1, PART V.

11. People v. Crucible Steel Company of America, 150 Mich. 563 (1907), Id. 151 Mich 618 (1908).

§546. Denial of Contractual Capacity.

12. This provision follows, and enlarges, the effective language of the preexisting statute, which was as follows: "No foreign corporation, subject to the provisions of this act, shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of this act, and at the time holds an unrevoked certificate to that effect from the secretary of state." 2 C. L. 1915, §9068, being §6 of Act 310 of 1907. The decisions under this former statute are applicable, with equal force, to the present law. Applying Act 310 of 1907, the Supreme Court has said: "We have no doubt that under the provisions of our statute, . . . it was unlawful for the plaintiff (an unlicensed foreign corporation) to carry on its business in this state; and it was incapable of making a valid contract for such purpose until it had complied with the requirements of the statute. A penalty is provided for the violation of these provisions, and, in our opinion, *the contract was void,* and against the settled policy of this state." Rex Beach Pictures Co. v. Harry I. Garson Productions, 209 Mich. 692, 703 (1920).

To the same effect, see Flint v. LeHeup, 199 Mich. 41, 48 (1917); E. A. Lange Medical Co. v. Brace, 186 Mich. 453 (1915); Nernst Lamp Co. v. Conrad, 165 Mich. 604 (1911); Despres, Bridges & Noel v. Zierleyn, 163 Mich. 399 (1910); Imperial Curtain Co. v. Jacob, 163 Mich. 72 (1910).

The defense that its contracts are void for non-compliance with the law relating to domestication is not available to the corporation. Kuennan v. United States Fidelity & Guaranty Co., 159 Mich. 123 (1909); Showen v. J. L. Owens Co., 158 Mich. 321, 333 (1909); DeHoop v. Peninsular Life Ins. Co., 193 Mich. 380 (1916). Nor is the fact of non-compliance available as a defense in be-

half of one charged with embezzlement of the foreign corporation's funds. People v. Hawkins, 106 Mich. 479, 484 (1895). See also International Harvester Co. v. Eaton County Circuit Judge, 163 Mich. 55 (1910). Nor by the corporation's receiver in bankruptcy. Goldberg v. Parker, 198 Mich. 396 (1917). Nor by its surety. Kuennan v. United States Fidelity & Guaranty Co., 159 Mich. 122 (1909).

An undomesticated, foreign corporation may maintain replevin to recover its property. Rex Beach Picture Co. v. Garson Productions, 209 Mich. 707 (1920).

§547. Non-Domestication Must be Pleaded.

The non-domestication of a foreign corporation is an affirmative defense, and is not available without notice. Hauley v. Gowan, 202 Mich. 293, 297 (1918); Power Specialty Co. v. Michigan Power Co., 190 Mich. 699, 718 (1916); Sharill v. Grand Trunk R. Co., 161 Mich. 495; Lewis J. Selznick Enterprises v. Harry I. Garson Productions, 202 Mich. 106, 111 (1918). A different rule was announced in the earlier cases of Swing v. Cameron, 145 Mich. 175, 182 (1906) and Heffron v. Daly, 133 Mich. 613, 615 (1903).

Part V, Chapter 1, Section 4

§548. Foreign Corporations—Agents, Penalties.

Penalties.

It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this state or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this state. Any person violating the provisions of this section

shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense, and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.[13]

Misdemeanor.

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 1, PART V

§549. Criminal Liability of Agents.

13. Similar provisions have been enforced. People v. Gay, 107 Mich. 422 (1895); People v. Howard, 50 Mich. 239 (1883).

§550. Service of Process Upon Foreign Corporations.

Domestication is intended to place foreign corporations on an equal footing with domestic corporations in the service of process. Marshall v. R. M. Owen Co., 171 Mich. 232 (1912). In general, service may be upon any officer or agent within this state. 3 C. L. 1915, §12434. There are certain cases in which designated state officers may be served. Id. §11950, §12436. Drueke-Lynch Co. v. Michigan Bonding & Surety Co., 204 Mich. 180 (1918). All practice statutes can also be found in Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd ed., same section.

A general appearance cures all defects in process and its service. Priest v. American Insurance Union, 171 Mich. 321 (1912).

See also Appendix B, §9045a.

PART V, CHAPTER 1, SECTION 5

§551. Foreign Corporations—Inclusions and Exclusions.

Inclusion and Exclusion.

The provisions of this chapter shall not be applicable to such foreign corporations as are permitted to do business in this state by license issued by the Commissioner of Insurance, according to the provisions of law. The term "corporations" as used in this chapter shall be construed to include all associations, partnership associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized. Foreign corporations organized not for pecuniary profit may be admitted to carry on their lawful business within this state upon the same terms and under the same restrictions as apply to similar non-profit corporations organized under the laws of Michigan, and upon paying the same filing, privilege and other fees as are prescribed by law for similar domestic corporations.[14]

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 1, PART V

§552. Licenses to Insurance Companies.

14. The Commissioner of Insurance issues licenses to foreign insurance corporations (Act 256 of 1917, Chap. II, p. 563) and surety companies. 2 C. L. 1915, (9222).

CHAPTER 2

ANNUAL AND OTHER CORPORATION REPORTS

§553. Non-Profit Corporation Reports.
§554. Reports of Non-Profit Companies.
§555. Non-Profit Corporation Reports After 1921.
§556. Filing Fee.
§557. Filing and Records.
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§562. Liability of Directors.
§563. Debts Contracted During Default.
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§566. Damages to Corporation.
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PART V, CHAPTER 2, SECTION 1

§553. Non-Profit Corporation Reports.

Reports.

Every corporation heretofore incorporated under any law of the state,[1] and now in existence, which by the law under which incorporated was not required to make or file an annual report, or which was required only to make such report as might be required by the Attorney General of this state from time to time, or whose articles were not required to be filed with the Secretary of State, shall, on or before the first day of January, nineteen hundred twenty-two, make and file with the Secretary of State a report showing the name of such corporation, the location of its principal office, the term for which incorporated, the act under which incorporated or

Names.

Directors and Trustees.

re-incorporated, the names and residences of its officers and directors, the purposes of such corporation, its authorized capital stock, if any, and the inventoried value of all property held or owned by such corporation at the time of filing such report. It shall be the duty of the directors or trustees of every such corporation to make and file the report herein required, and upon such form as may be prescribed by the Secretary of State. The Secretary of State shall make an index of all of the reports filed pursuant to this section, and file all such reports along with the other corporation records in his office. This section shall not be construed as applying to corporations filing articles or reports with the Insurance Department or the Banking Department, or with the Michigan Public Utilities Commission, but shall include all other corporations otherwise exempted under the provisions of section eight of chapter one, part one, of this act.[2]

COMMENTARIES ON THE FIRST SECTION OF CHAPTER 2, PART V

1. This chapter must be read and construed together with Act 85 of 1921.

The corporation code (Act 84 of 1921) became effective April 26, 1921. The corporation tax law (Act 85 of 1921) became effective April 27, 1921—one day later. The latter expressly repeals all acts and parts of acts inconsistent therewith.

For Act 85 of 1921, see §673 et seq.

§554. Reports of Non-Profit Companies.

2. Section 1 of this chapter is a drag-net designed to accumulate in the office of the Secretary of State information

Amendments to the Statute

§555. Non-Profit Corporation Report After 1921.

SECTION 2. All domestic corporations of whatsoever nature whose purposes and objects do not include business for pecuniary profits, including those organized under act number one hundred seventy-one of the public acts of nineteeen hundred three, *and all corporations referred to in section one of this chapter and all trustee corporations operating not for profit except* all ecclesiastical and educational corporations, all such corporations of the nature embraced in chapter two and three of part three of this act, * * *[a] shall file a report with the secretary of state, similar to that required in section one hereof, in the year nineteen hundred twenty-four and every third year after. Such reports shall be filed in the months of July or August of the year in which filed. Approved May 27, 1925.

a. The words omitted are: "and all corporations referred to in Section one of this chapter and all trustee corporations operating not for profit."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '25, Act No. 388, effective August 27, '25.

for public and departmental use, which shall be sufficient to enable collection of the privilege tax imposed by Act 85 of 1921.

Although Act 85 of 1921 required all corporations to file reports in July or August, 1921 (§683), that provision was not construed by the department of state to be applicable to non-profit companies.

PART V, CHAPTER 2, SECTION 2

§555. Non-Profit Corporation Reports After 1921.

Reports of Non-Profit Corporations.

All domestic corporations of whatsoever nature whose purposes and objects do not include business for pecuniary profits, including those organized under act number one hundred seventy-one of the Public Acts of nineteen hundred three, all ecclesiastical and educational corporations, all such corporations of the nature embraced in chapters two and three of part three of this act, and all corporations referred to in section one of this chapter and all trustee corporations operating not for profit, shall file a report with the Secretary of State, similar to that required in section one hereof, in the year nineteen hundred twenty-four and every third year after. Such reports shall be filed in the months of July or August of the year in which filed.

PART V, CHAPTER 2, SECTION 3

§556. Filing Fee.

Information from Officers.

The Secretary of State may call upon the several county clerks or registers of deeds, for any information respecting the corporations referred to in the foregoing sections, and such officers

Information.

shall furnish such information as may be so demanded. With every report forwarded to the Secretary of State pursuant to sections one and two of this chapter, the corporation forwarding the same shall also send a filing fee of two dollars, which fees when received shall be deposited in the state treasury and credited to the general fund of the state.[3]

COMMENTARIES ON THE THIRD SECTION OF CHAPTER 2, PART V

3. Act 85 of 1921 requires payment of the privilege fee at the time of filing the report. (See §§676, 683).

PART V, CHAPTER 2, SECTION 4

§557. Filing and Records.

Place of Filing.

Hereafter it shall not be necessary for any corporation to file its by-laws with any county clerk. All articles, amendments thereto, and annual or other periodic reports of corporations shall be originally filed with the Secretary of State,[4] and copies thereof shall be prepared by the corporation itself in each instance to be certified by the Secretary of State and forwarded for filing in the office of the county clerk of the county where such corporation has its principal office or place of business. The county clerks shall keep their corporation records and files in such manner and form as to readily show the proper classification to which each corporation belongs, alphabetically arranged as to names and other indexing.

Amendments to the Statute

§558. Reports of Profit Corporations.

SECTION 5. Every corporation organized for pecuniary profits, including every foreign corporation admitted to carry on business in this State, *and including corporations enumerated in section eight of chapter one of part one of this act and excepting only railroad companies and interubran railroad companies, telephone and telegraph companies, express companies, and foreign insurance companies,* shall annually, in the month of July or August *file* a report *in* duplicate *with the Secretary of State* showing *its condition at the close of business upon* the * * *a *thirty-first day of December, or upon the date of the close of its fiscal year,* next preceeding, on suitable blanks to be furnished by the Secretary of State as hereinafter provided: *Provided, That every such corporation organized on or after January first and prior to August thirty-first of any one year shall file a report in duplicate showing the condition of its business on the date of its incorporation, and shall pay the filing fee and a privilege fee of ten dollars.* Such report shall furnish the Secretary of State with all information and facts necessary for the computation of the annual franchise fee provided by law. The Secretary of State is h by authorized to require of any corporation any additional information that may be needed after the filing of its annual report for the purpose of computing such fee. Such report shall state * * *b *the name of the corporation; the date of incorporation, or in the case of foreign corporations, the date admitted to do business in this State; the place or places of doing business either within or withoiut this State;* the names and addresses of its officers and directors; *the amout of authorized capital stock and the number of shares of each class authorized; the captial stock subscribed and paid for, and the par value of each kind of shares authorized; the market and book value of and the price fixed by the corporation for the sale or exchange of its shares of no par value, if any; the nature and kind of business in which such corporation is engaged; the nature, location and value of the property owned and used by the corporation both within and without Michigan, given separately; and a complete and detailed statenent of the assets and outstanding liabilities of the company, and such other information as the Secretary of State may require.* It shall be the duty of the Secretary of State on application of such

COMMENTARIES ON THE FOURTH SECTION OF CHAPTER 2, PART V

4. This, of course, refers to corporations within the terms of this act.

PART V, CHAPTER 2, SECTION 5

§558. Reports of Profit Corporations.

Time of Filing.

Every corporation organized for pecuniary profit, including every foreign corporation admitted to carry on business in this state, shall annually, in the month of July or August, make duplicate reports showing the condition of such corporation on the thirtieth day of June, next preceding, on suitable blanks to be furnished by the Secretary of State, as hereinafter provided. Such report shall furnish the Secretary of State with all information and facts necessary for the computation of the annual franchise fee provided for by law. The Secretary of State is hereby authorized to require of any corporation any additional information that may be needed after the filing of its annual report for the purpose of computing such fees. Such report shall state the amount each of common and preferred capital stock authorized, and the amount thereof, subscribed for, and the amount thereof actually paid in cash, and the amount thereof paid in property; the total value as near as may be estimated of all property owned by the corporation; the value of different items or classes of property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material and other tangible property; patent rights, trademarks and formulas; good will; and all other property including sur-

Surplus and Funds.

plus, reserve funds and sinking funds, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each officer and director of the corporation, and such other information as the Secretary of State may require. It shall be the duty of the Secretary of State on application of such corporation to mail to each corporation which is subject to the provisions of this act, suitable blanks for making the reports and returns required by law. Such reports shall be signed by president or vice-president of the corporation and the secretary or assistant secretary of the corporation and verified by the oath of the secretary of the corporation, and deposited in the office of the Secretary of State within the said month of July or August, or within sixty days after the close of such fiscal year, accompanied by a filing fee of two dollars, and the amount of the annual franchise fee provided by law; such filing fees when received shall daily be covered into the state treasury and there credited to the general fund of the state.[5]

For corresponding provision of Act 232 of 1903, see Appendix B (9028).

COMMENTARIES ON THE FIFTH SECTION OF CHAPTER 2, PART V

5. Act 85 of 1921 takes precedence over this section insofar as there is conflict. The reports required under Act 85 satisfy the requirements of this section. The franchise fee herein provided and the privilege fee required under Act 85, are construed to be one and the same.

It will be noted that Act 85 contains no fiscal year provision—*all* reports being due in "July or August."

corporation to mail to each corporation which is subject to the provision of this act, suitable blanks for making the reports and returns required by law. Such reports shall be signed by the president or vice-president of the corporation and the secretary or assistant secretary of the corporation, and verified by the oath of * * *c *any one of the above named officers signing the report*, and deposited in the office of the Secretary of State within the said months of July or August * * *d accompanied by a filing fee of two dollars, and the amount of the annual franchise fee provided by law; such filing fee when received shall daily be covered into the State Treasury and there credited to the general fund of the State.[5]

a. The words omitted are: "Thirtieth day of June."

b. The words omitted are: "amount each of common and preferred capital stock authorized, and the amount thereof, subscribed for, and the amount thereof actually paid in cash, and the amount thereof paid in property; the total value as near as may be estimated of all property owned by the corporation; the value of different items or classes of property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise material and other tangible property; patent rights, trademarks and formulas; good will; and all other property including surplus, reserve funds and sinking funds, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; and such other information as the secretary of state may require."

c. The words omitted are: "the secretary of the corporation."

d. The words omitted are: "or within sixty days after the close of such fiscal year."

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 72, approved April 26, '27, to take immediate effect.

A New Law

§559a. Validating Acts of Corporations Filing Report under Act No. 85.

SECTION 1. *Where any corporation shall have heretofore filed in the office of the Secretary of State a report for any year which shall furnish for such year the information required by act number eighty-five of the Public Acts of nineteen hundred twenty-one, and has otherwise fully complied with the provisions of said act, then whether or not such report shall purport to have been filed pursuant to or in compliance with or shall contain all the information required by act number eighty-four of the Public Acts of nineteen hundred twenty-one, neither the said corporation nor any of its directors or trustees shall, from and after the filing of such report and the compliance with the other provisions of act number eighty-five of the Public Acts of nineteen hundred twenty-one, be subject in respect of the report for said year to any of the liabilities, disabilities or disadvantages in sections six and seven of chapter two, part five, of act number eighty-four of the Public Acts of nineteen hundred twenty-one provided, in respect of failure to file the report required by said act. All contracts entered into and business and other acts done after the filing of the report under act number eighty-five aforesaid, shall, so far as the same might be affected by failure to file the report for said year required by act number eighty-four aforesaid, be as valid,e ffectual and enforceable as though the provisions of said sections six and seven of act number eighty-four aforesaid had never been in force and effect. Where any corporation shall have been in default in filing its report under said act number eighty-five, nothing herein contained shall relieve said corporation nor any of its directors or trustees from any liabilities, disabliites or disadvantages incurred nor validate contracts made during the period of such default.*

This act is ordered to take immediate effect.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '27, Act No. 6, approved March 22, '27, and ordered to take immediate effect.

PART V, CHAPTER 2, SECTION 6

§559. Penalties for Failure to Report.

Examination and Filing.

The Secretary of State shall carefully examine all such reports, and if upon such examination they shall be found to comply with all the requirements of this chapter, he shall then file one of them in his office, and shall forward the other by mail or express to the county clerk of the county in which the office in this state for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any corporation neglects or refuses to make and file the reports required by this chapter within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be suspended[6] thereafter, until it shall file such report, and it shall not maintain an action in any court of this state upon any contract entered into during the time of such default; and any director or trustee of such corporation so in default, who has neglected or refused to join in the making of such report shall be liable for all debts of such corporation contracted during the period of such neglect or refusal,[7] and shall also be liable to such corporation for any damages sustained by it by reason of such refusal or neglect.[8] Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this chapter, the Secretary of State shall cause notice of that fact to be given by mail to such corporation, directed to its postoffice address. The certificate of the Secretary of State or his deputy, of the mailing of such no-

Penalty for Non-Filing.

Corporation. Notice to

Prima Facie Evidence.

tice, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said corporation.[9] All actions and suits based on the neglect or refusal of the officers or directors of such corporation to make and file the reports required by this section shall be commenced within two years after such neglect or refusal has occurred and not afterwards.[10]

For corresponding provision of Act 232 of 1903, see Appendix B (9028).

COMMENTARIES ON THE SIXTH SECTION OF CHAPTER 2, PART V

§560. Penalties for Failure to File Reports.

6. By Act 84 of 1921, the penalties for default in filing annual reports are:

(a) Suspension of corporate powers during default;

(b) Denial of right to sue upon contracts made during default;

(c) Individual liability of derelict directors for all corporate debts contracted during the period of neglect or refusal to join in making such report;

(d) Individual liability of derelict directors for damages sustained by the corporation through such neglect or refusal.

Under Act 85 of 1921, failure or neglect to file such report casts upon the corporation a penalty of $100, plus $5 for each day in which such default continues. (§686).

The question arises at once: Are these penalties cumulative? Or does the later act repeal the penalty clause of the earlier act?

Two classes of defaults are involved:

(a) Default of the corporation, and

(b) Default of the directors.

Act 85 deals with default of the corporation only. Its sole purpose is to compel submission of data upon which a privilege fee may be computed. Act 84 deals with the default of the corporation and the default of the directors. Its purpose is the protection of creditors and the public, and to compel payment of the franchise fee, by making such payment a condition precedent to filing the report. The provisions of the two acts may stand together. If the corporation pays the penalty imposed by Act 85, the defaulting directors are liable for reimbursement of the corporation under Act 84. (§559.)

"Repeals by implication are not favored. They are never permitted if they can be avoided by a reasonable construction of the statute. If both acts can be given full force without conflicting with each other, or if the later act is merely affirmative, or cumulative, or auxiliary, and not inconsistent, both must stand." Mr. Justice Stone in People v. Thompson, 161 Mich. 391, 395 (1910); Tillotson v. City of Saginaw, 94 Mich. 240, 245 (1892); People v. Hanrahan, 75 Mich. 611, 622 (1889); Connors v. Carp River Iron Co., 54 Mich. 168 (1884).

§561. Suspension of Corporate Powers.

This penalty is the same, and is expressed in substantially the same language, originally employed in Act 194 of 1905, amending §12 of Act 232 of 1903, except that Act 137 of 1907 extended the time of filing to, and including, the last day of February, with ten days further grace allowed as before, 2 C. L. 1915 (9028).

Suspension of the corporate powers by default in filing reports is automatic. If the default is eventually cured by filing the tardy report, the disability as to future transactions *ipso facto* disappears. Reuter Hub & Spoke Co. v.

Hicks, 181 Mich. 250, 256 (1916); Weber v. Draper, 170 Mich. 550, 556 (1912). Contracts made during the period of suspension remain uninforcible in the courts of this state. Continental & Commercial National Bank v. Emery, 178 Mich. 612, 615 (1914); Irvine & Meier v. Wienner, 212 Mich. 199 (1920). But the corporation cannot take advantage of its own default. Ante §546.

§562. Liability of Directors.

7. "Any director or trustee of such corporation so in default, who has neglected or refused to join in the making of such report shall be liable for all debts of such corporation contracted during the period of such neglect or refusal." To all intents and purposes, this is the same language used in Act 142 of 1915, 2 C. L. 1915, (9028), and it therefore may be said to have been construed in Vulcanized Products Co. v. Bender, 202 Mich. 346 (1918) where the court held (a) that the statute in force at the time of trial controls, and (b) that the neglect or refusal of the directors "commences only after the days of grace have expired."

The liability is now limited to debts contracted "during the period of such neglect or default." Prior to 1915 there was no such limitation. Reuter Hub & Spoke Co. v. Hicks, 181 Mich. 250, 253, 254 (1914). The liability related back to the date of filing the last report on file at the time of default. Continental & Commercial National Bank v. Emery, 178 Mich. 612 (1914); American Brass Co. v. Emery, 189 Mich. 593, 595 (1915). This is no longer the law.

While the present statute makes it the duty of the directors "to make and *file* the report herein required" (§2), the penalty as to directors attaches to "neglect or refusal to join in the *making* of such report." This portion of the statute is penal and cannot be enlarged by construction.

Bank of Saginaw v. Pierson, 112 Mich. 410 (1897); Young v. Moore, 162 Mich. 60, 63 (1910); Crosby v. Pere Marquette R. Co., 131 Mich. 288, 292 (1902); Deloria v. Atkins, 158 Mich. 232, 241 (1909). "A penal statute is one which enforces a forfeiture or penalty for transgressing its provisions or doing a thing prohibited." People v. Crucible Steel Co., 151 Mich. 618, 620 (1908). When the directors have joined in *making* the report, the penalty as to them under section (§559) is avoided, even though the company fails to file the instrument. Ford River Lumber Co. v. Perron, 148 Mich. 399, 402 (1907); Macbeth-Evans Glass Co. v. Gumbrinsky, 201 Mich. 18 (1918); Gennert v. Ives, 102 Mich. 547 (1894). But it would seem that they may be liable for the default of the corporation under §335 ante.

§563. Debts Contracted During Default.

A judgment taken during default upon a debt contracted prior to default is not a "debt contracted" during default within the meaning of the statute. Weber v. Draper, 170 Mich. 550, 556 (1912). As stated by Mr. Justice Cooley, in construing a similar statute: "The statute, it will be perceived, only makes the directors personally liable for 'debts.' Liabilities of the company which may give rise to causes of action against it and result in judgments are not within the statute unless they constitute present debts." Lockhart v. Van Alstyne, 31 Mich. 76, 77 (1875). The possible liability of directors under this section is limited to debts contracted during default, and does not extend to claims or judgments not arising out of contract relations. Weber v. Draper, 170 Mich. 550, 556 (1912); Bohn v. Brown, 33 Mich. 257 (1876).

It is clear that the language of the present statute limits the liability of defaulting directors to contracts made dur-

ing the period in which such directors were in default. As to contracts entered into before default, or after the default has been cured, they are not liable. See Westchester Appliance Co. v. Englehardt, 180 Mich. 602 (1914).

The present act, in title and text, extends to foreign corporations and their directors. It was held that Act 232 of 1903 applied to domestic corporations only. Young v. Moore, 162 Mich. 60 (1910).

Under the present statute, the fact that the report filed is incorrect and untrue will not fix liability upon the directors. 2 Thomp. Corp. (2 ed.) §1783, p. 870.

EXTRA-TERRITORIAL ENFORCEMENT OF PENALTIES.

As a general rule, penal statutes are not given extra-territorial operation. This principle extends to suits brought against directors under statutes, similar to the one under consideration, imposing individual liability as a penalty for some default or neglect. Such suits will not be entertained, as a rule, outside the state whose laws impose the penalty. 4 Fletcher Cyc. Corp. §2899, p. 4194; 21 R. C. L. §18, p. 225; 30 Cyc. 1347. Courts of some states take the position that such statutes are not purely penal, but are partly compensatory, and for that reason may be enforced extra-territorially. Great Western Machinery Co. v. Smith, (Kan.) 41 L. R. A. (N. S.) 379 (1912). This is the rule in the federal courts. Huntington v. Attrill, 146 U. S. 657, 36 L. ed. 1123; First National Bank v. Weidenbeck, 97 Fed. 896 (1899); Davis v. Mills, 99 Fed. 39 (1900); Risdon Iron & Locomotive Works v. Von Storch, 166 Fed. 936 (1909).

§564. Enforcement of Liability of Directors.

The declaration should allege, and the proofs should establish, (a) That the defendants were directors charged with the duty violated, (b) The violation of the duty, (c)

That the debt arose during the period of default. In other words, the cause will fail, if the directors are not brought within the terms of the statute. Ford River Lumber Co. v. Perron, 148 Mich. 399 (1907).

Assumpsit is a proper form of action under this statute. 3 C. L. 1915, §12350, provides that, "In all cases not otherwise specifically provided for by law, where a pecuniary penalty or forfeiture shall be incurred by any person, and the act or omission for which the same is imposed shall not also be a misdemeanor, such penalty or forfeiture may be recovered in an action of assumpsit."

The liability is several, but all directors liable may be sued in one action. M. I. Wilcox Cordage & Supply Co., 114 Mich. 64, 66 (1897); Bank of Saginaw v. Pierson, 112 Mich. 410 (1897). The corporation is not a necessary party. 4 Fletcher Cyc. Corp. §2909, p. 4205.

As a general rule, a director who has paid indebtedness of a corporation as a penalty is not entitled to contribution from his co-directors, nor to reimbursement from the corporation. 2 Thomp. Corp. (2 ed.) §1367; 4 Fletcher Cyc. Corp. §2923, p. 4211; Breitung v. Lindauer, 37 Mich. 217, 228 (1877). To this rule various courts have recognized exceptions, founded upon special circumstances. 2 Thomp. Corp. (2 ed.) §1367 et seq.

§565. Liability of Incoming Directors.

It is the duty of an incoming director to promptly ascertain the status of corporate affairs. If he permits a past-due report to remain unexecuted, the default is his and he will be liable. The fact that his predecessor was also in default is no excuse. 4 Fletcher Cyc. Corp. §2878, p. 4174.

§566. Damages to Corporation.

8. The derelict directors may be required to answer for damage sustained by the corporation.

(a) In consequence of suspension of its corporate powers;

(b) In consequence of penalties incurred under §10, (§686) of Act 85 of 1921.

It has been held that an incoming director will not be liable to the corporation for damages of this nature which arose prior to his election. Providence Steam Engine Co. v. Hubbard, 101 U. S. 188, 25 L. ed. 786 (1879).

§567. Certificate of Non-filing.

9. The certificate of notice of non-filing is not in and of itself proof that the report was not filed, unless it includes the further statement that the secretary of state making the certificate "has made diligent examination in his office for such paper, document or record and that it cannot be found." 3 C. L. 1915, §12510. See also Macbeth-Evans Glass Co. v. Gumbinsky, 201 Mich. 18 (1918); Deloria v. Van Winkle, 162 Mich. 660, 662 (1910).

§568. Statute of Limitations.

10. The statute begins to run when the default occurs. Under Act 84 of 1921, the date is the eleventh day of September of the year in which the report is due. Continental and Commercial National Bank v. Emery, 178 Mich. 612, 615 (1914). Under Act 85 of 1921, the penalties imposed (by that act) attach on the first day of September.

A New Section Added

§568a. Charter Void After Neglect for Two Years.

SECTION 7. *Any corporation which has heretofore under any existing law been required to file an annual report with and pay a franchise fee or tax to the secretary of state, and shall have neglected or refused to file such report or to pay such fee or tax for two consecutive years next preceding the first day of September, nineteen hundred twenty-three, the charter of such corporation shall after that date be void, unless the secretary of state shall for good cause shown extend the time for the filing of such report or the payment of such fee or tax; and if any corporation which is now or may hereafter be required to file its annual report with and pay a franchise fee or tax to the secretary of state, shall for two consecutive years neglect or refuse to file such report or to pay such fee or tax, the charter of such corporation shall be void unless the secretary of state shall for good cause shown extend the time for the filing of such report or the payment of such fee or tax as the case may be. In case of an extension of time as provided in this section, the secretary of state shall file in his office a certificate showing the length of time granted by such extension: Provided, That in no case shall the total extension of time granted be more than one year.*

Approved May 10, 1923.

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 172, effective August 30, '23, by adding a new section to stand as Section 7.

A New Section Added

§568b. Names of Stockholders Unnecessary Unless Requested.

SECTION 8. *Hereafter it shall not be necessary for any corporation to file with the secretary of state the names of the owners of the capital stock issued by such corporation, unless so requested by the secretary of state. Whenever any corporation shall be requested by the secretary of state to file a list of the names of the owners of the capital stock issued by it, such corporation shall file the same within thirty days after such request has been made.*

HISTORY: P. A. '21, Act No. 84, as amended by P. A. '23, Act No. 275, effective August 30, '23, by adding new sections to stand as Sections 8 and 9 and repealing C. L. '15, (15082) and (15083).

A New Section Added

§568c. Fine for Failure if Requested.

SECTION 9. *In case any corporation shall fail to file with the secretary of state a list of the names of the owners of the capital stock issued by it within thirty days after being requested so to do by the secretary of state, such corporation shall be liable to pay a fine of not more than five hundred dollars which may be recovered in the name of the people of the state of Michigan in any court of record, and when so collected it shall be paid into the treasury of the township or city where such corporation is located, for the benefit of the primary school fund of said township or city.*

Approved May 24, 1923.

HISTORY: P. A. '21, Act. No. 84, as amended by P. A. '23, Act No. 275, effective Aug. 30, '23. See note to Section 8.

CHAPTER 3

SCHEDULE OF REPEALS, AND SAVING CLAUSES

PART V, CHAPTER 3, SECTION 1

§569. Acts Repealed.*

The following acts, and all acts and parts of acts amendatory thereto, are hereby repealed, namely:

Acts Repealed.

Act number one hundred twenty-two of the Public Acts of eighteen hundred seventy-seven; act number one hundred fifty-eight of the Public Acts of eighteen hundred eighty-three; act number eleven of the Public Acts of eighteen hundred ninety-five; act number seventy-three of the Public Acts of eighteen hundred sixty-nine; act number two hundred twelve of the Public Acts of eighteen hundred sixty-one; act number one hundred sixty-nine of the Public Acts of eighteen hundred seventy-nine; act number fifty-eight of the Public Acts of eighteen hundred seventy-seven; act number seventy-five of the Public Acts of eighteen hundred eighty-seven; act number fifty-six of the Public Acts of eighteen hundred ninety-one; act number one hundred seven of the Public Acts of eighteen hundred eighty-one; act number one hundred seventeen of the Public Acts of eighteen hundred fifty-five; act number twenty-two of the Public Acts of eighteen hundred eighty-three; act number sixty-four of the Public Acts of nineteen hundred five; act number sixteen of the Public Acts of eighteen hundred sixty-

* For alphabetical list of repealed acts see Index, under heading, "Acts Repealed." For a Table of sections repealed see page 405.

Acts Repealed—Continued.

nine; act number eight of the Public Acts of eighteen hundred sixty-seven; act number seventy-six of the Public Acts of eighteen hundred eighty-three; act number one hundred fifteen of the Public Acts of eighteen hundred eighty-nine; act number fifty-four of the Public Acts of eighteen hundred seventy-seven; act number one hundred sixty-seven of the Public Acts of eighteen hundred eighty-nine; act number ninety-seven of the Public Acts of eighteen hundred ninety-seven; act number twenty-seven of the Public Acts of eighteen hundred eighty-two; act number eighty-five of the Public Acts of eighteen hundred ninety-three; act number sixty-seven of the Public Acts of eighteen hundred ninety-five; act number eighty-two of the Public Acts of eighteen hundred ninety-seven; act number one hundred ninety-two of the Public Acts of eighteen hundred eighty-three; act number one hundred four of the Public Acts of eighteen hundred sixty-nine; act number seventy-three of the Public Acts of eighteen hundred seventy-nine; act number forty-eight of the Public Acts of eighteen hundred eighty-three; act number one hundred seventeen of the Public Acts of eighteen hundred fifty-one; act number eighty-three of the Public Acts of eighteen hundred fifty-one; act number forty of the Public Acts of eighteen hundred fifty-five; act number sixteen of the Public Acts of eighteen hundred sixty-four; act number sixty-two of the Public Acts of eighteen hundred forty-eight; act number one hundred fifty-five of the Public Acts of eighteen hundred fifty-one; act number one hundred twenty-two of the Public Acts of eighteen hundred fifty-five; act number one hundred fifty-three of the Public Acts of eighteen hundred ninety-one; act number one hundred eighty-six

Acts Repealed—Continued.

of the Public Acts of eighteen hundred sixty-three; act number two hundred thirty-nine of the Public Acts of eighteen hundred seventy-nine; act number one hundred ninety of the Public Acts of eighteen hundred eighty-seven; act number two hundred ninety-nine of the Public Acts of eighteen hundred eighty-seven; act number one hundred thirteen of the Public Acts of eighteen hundred seventy-seven; act number one hundred forty-two of the Public Acts of eighteen hundred eighty-nine; act number two hundred thirty-two of the Public Acts of nineteen hundred three; act number one hundred seventy-one of the Public Acts of nineteen hundred three; act number two hundred six of the Public Acts of nineteen hundred one; act number one hundred twenty of the Public Acts of eighteen hundred seventy-seven; act number one hundred sixty-seven of the Public Acts of nineteen hundred seven; act number sixteen of the Public Acts of eighteen hundred eighty-two; act number thirty-nine of the Public Acts of eighteen hundred fifty-five; act number two hundred thirty-one of the Public Acts of nineteen hundred eleven; act number three hundred fifty-nine of the Public Acts of nineteen hundred thirteen; act number nineteen of the Public Acts of eighteen hundred thirty-nine; act number one hundred ninety-one of the Public Acts of eighteen hundred ninety-three; act number one hundred sixty of the Public Acts of eighteen hundred ninety-five; act number two hundred of the Public Acts of eighteen hundred ninety-seven; act number ninety-five of the Public Acts of eighteen hundred sixty-nine; act number one hundred fifty-six of the Public Acts of eighteen hundred seventy-three; act number twenty-nine of the Public Acts of eighteen hundred ninety-nine; act number two

Acts Repealed—Continued.

hundred thirty-two of the Public Acts of eighteen hundred eighty-seven; act number one hundred twenty-eight of the Public Acts of eighteen hundred fifty-seven; act number one hundred fifty-five of the Public Acts of eighteen hundred seventy-nine; act number one hundred sixty-six of the Public Acts of eighteen hundred ninety-nine; act number twenty of the Public Acts of eighteen hundred fifty-five; act number fifty-two of the Public Acts of eighteen hundred ninety-seven; act number one hundred thirty-five of the Public Acts of eighteen hundred sixty-seven; act number two hundred forty-two of the Public Acts of eighteen hundred sixty-three; act number three hundred eight of the Public Acts of nineteen hundred seven; act number two hundred nine of the Public Acts of eighteen hundred ninety-seven; act number one hundred ten of the Public Acts of eighteen hundred eighty-nine; act number one hundred thirteen of the Public Acts of eighteen hundred eighty-seven; act number eighty-nine of the Public Acts of nineteen hundred one; act number one hundred forty-one of the Public Acts of nineteen hundred five; act number two hundred fifty-six of the Public Acts of nineteen hundred three; act number seventy-four of the Public Acts of eighteen hundred ninety-five; act number thirty-one of the Public Acts of eighteen hundred ninety-seven; act number two hundred sixty-eight of the Public Acts of eighteen hundred eighty-one; act number three hundred fifteen of the Public Acts of eighteen hundred eighty-seven; act number ninety-six of the Public Acts of eighteen hundred seventy-one; act number two hundred eighty-eight of the Public Acts of eighteen hundred sixty-five; act number three hundred ninety-eight of the Public Acts of nine-

Acts Repealed—Continued.

hundred thirty-two of the Public Acts of eighteen hundred eighty-seven; act number one hundred twenty-eight of the Public Acts of eighteen hundred fifty-seven; act number one hundred fifty-five of the Public Acts of eighteen hundred seventy-nine; act number one hundred sixty-six of the Public Acts of eighteen hundred ninety-nine; act number twenty of the Public Acts of eighteen hundred fifty-five; act number fifty-two of the Public Acts of eighteen hundred ninety-seven; act number one hundred thirty-five of the Public Acts of eighteen hundred sixty-seven; act number two hundred forty-two of the Public Acts of eighteen hundred sixty-three; act number three hundred eight of the Public Acts of nineteen hundred seven; act number two hundred nine of the Public Acts of eighteen hundred ninety-seven; act number one hundred ten of the Public Acts of eighteen hundred eighty-nine; act number one hundred thirteen of the Public Acts of eighteen hundred eighty-seven; act number eighty-nine of the Public Acts of nineteen hundred one; act number one hundred forty-one of the Public Acts of nineteen hundred five; act number two hundred fifty-six of the Public Acts of nineteen hundred three; act number seventy-four of the Public Acts of eighteen hundred ninety-five; act number thirty-one of the Public Acts of eighteen hundred ninety-seven; act number two hundred sixty-eight of the Public Acts of eighteen hundred eighty-one; act number three hundred fifteen of the Public Acts of eighteen hundred eighty-seven; act number ninety-six of the Public Acts of eighteen hundred seventy-one; act number two hundred eighty-eight of the Public Acts of eighteen hundred sixty-five; act number three hundred ninety-eight of the Public Acts of nine-

Acts Repealed—Continued.

teen hundred thirteen; act number ninety-seven of the Public Acts of eighteen hundred ninety-seven; act number two hundred thirty-three of the Public Acts of eighteen hundred sixty-five; act number three of the Public Acts of eighteen hundred eighty-five; act number two hundred forty-five of the Public Acts of nineteen hundred thirteen; act number one hundred thirty-five of the Public Acts of eighteen hundred ninety-nine; act number one hundred twenty-one of the Public Acts of nineteen hundred fifteen; act number twenty-eight of the Public Acts of nineteen hundred one; act number two hundred twelve of the Public Acts of nineteen hundred three; act number one hundred sixty-one of the Public Acts of eighteen hundred ninety-three; act number one hundred nineteen of the Public Acts of eighteen hundred seventy-seven; act number two hundred six of the Public Acts of eighteen hundred ninety-nine; act number one hundred eight of the Public Acts of eighteen hundred ninety-three; act number one hundred eleven of the Public Acts of eighteen hundred seventy-nine; act number two hundred seventeen of the Public Acts of eighteen hundred fifty-nine; act number two hundred sixty-one of the Public Acts of eighteen hundred seventy-nine; act number one hundred sixty-eight of the Public Acts of nineteen hundred three; act number one hundred ninety-one of the Public Acts of eighteen hundred ninety-one; act number two hundred fifty-three of the Public Acts of eighteen hundred ninety-seven; act number thirty-five of the Public Acts of eighteen hundred ninety-nine; act number two hundred fifty of the Public Acts of eighteen hundred ninety-nine; act number two hundred thirty-nine of the Public Acts of nineteen hundred seventeen.

(Note: The act recites number and year, without titles. The titles and references to the Compiled Laws of 1915 are here inserted for convenience in identification.)

§570. Yachting, Hunting, Etc.

Act No. 122 of the Public Acts of 1877; 2 C. L. 1915, (10098) et seq. ("An Act for the incorporation of associations for yachting, hunting, boating, fishing, rowing, and other lawful sporting purposes.")

§571. Base Ball Clubs.

Act No. 158 of the Public Acts of 1883; 2 C. L. 1915, (10105) et seq. ("An Act to provide for the incorporation of baseball clubs or companies.")

§572. American Wheelmen.

Act No. 11 of the Public Acts of 1895; 2 C. L. 1915, (10111) et seq. ("An Act to provide for the incorporation of divisions and clubs of the League of American Wheelmen.")

§573. Marksmen.

Act No. 73 of the Public Acts of 1869; 2 C. L. 1915, (10116) et seq. ("An Act for the incorporation of societies of Marksmen.")

§574. Gymnastic Associations.

Act No. 212 of the Public Acts of 1861; 2 C. L. 1915, (10124 et seq. ("An Act to authorize the formation of gymnastic associations.")

§575. Medical Society.

Act No. 169 of the Public Acts of 1879; 2 C. L. 1915, (10143) et seq. ("An Act for the incorporation of the Michigan State Medical Society.")

§576. Eclectic Medical Societies.

Act No. 58 of the Public Acts of 1877; 2 C. L. 1915, (10149) et seq. ("An Act for the incorporation of Eclectic Medical Societies.")

§577. Pharmacists and Druggists.

Act No. 75 of the Public Acts of 1887; 2 C. L. 1915, (10157) et seq. ("An Act granting that corporations may be organized, the object of which shall be to unite the reputable pharmacists and druggists of the State of Michigan, for the purpose of improving the science and art of pharmacy, the elevation of its standard and the promotion, by legitimate means, of the practice of pharmacy among properly qualified persons of that profession.")

§578. Veterinary Associations.

Act No. 56 of the Public Acts of 1891; 2 C. L. 1915, (10163) et seq. ("An Act to authorize the incorporation of Veterinary Medical Associations.")

§579. Bar Associations.

Act No. 107 of the Public Acts of 1881; 2 C. L. 1915 (10169) et seq. ("An Act to authorize the formation of incorporation of associations of members of the bar.")

§580. Teachers' Associations.

Act No. 117 of the Public Acts of 1855; 2 C. L. 1915, (10174) et seq. ("An Act to incorporate Teachers' Associations.")

§581. Social Clubs.

Act No. 22 of the Public Acts of 1883; 2 C. L. 1915, (10177) et seq. ("An Act to authorize the formation of clubs for social purposes.")

§582. Women's Clubs.

Act No. 64 of the Public Acts of 1905; 2 C. L. 1915, (10184) et seq. ("An Act to authorize the formation of women's clubs.")

§583. Total Abstinence Benevolent Societies.

Act No. 16 of the Public Acts of 1869; 2 C. L. 1915, (10317) et seq. ("An Act to provide for the incorporation of the "Father Matthew Total Abstinence Benevolent Societies.")

§584. Good Templars.

Act No. 8 of the Public Acts of 1867; 2 C. L.1915, (10323) et seq. ("An Act to provide for the incorporation of lodges of the Independent Order of Good Templars.")

§585. Temple of Honor.

Act No. 76 of the Public Acts of 1883; 2 C. L. 1915, (10332) et seq. ("An Act to provide for the incorporation of the Grand Temple of Honor of the State of Michigan, and any subordinate "Temple of Honor" of the order of "Templars of Honor and Temperance" in the State of Michigan.")

§586. Subordinate Temples of Honor.

Act No. 115 of the Public Acts of 1889; 2 C. L. 1915, (10337) et seq. ("An Act to provide for the incorporation of subordinate temples of honor and temperance.")

§587. Reform Societies.

Act No. 54 of the Public Acts of 1877; 2 C. L. 1915, (10341) et seq. ("An Act to provide for the incorpora-

tion of reform club temperance societies within this State.")

§588. Finnish National Brothers' Temperance Associations.

Act No. 167 of the Public Acts of 1889; 2 C. L. 1915, (10347) et seq. ("An Act to provide for the incorporation of Finnish National Brothers' Temperance Associations of North America.")

§589. Finnish Temperance Friends' Association.

Act No. 97 of the Public Acts of 1897; 2 C. L. 1915, (10358) et seq. ("An Act to provide for the incorporation of the Finnish Temperance Friends' Association of America.")

§590. Royal Templars of Temperance.

Act No. 27 of the Public Acts of 1882; 2 C. L. 1915, (10368) et seq. ("An Act to provide for the incorporation of the Grand Council of the Royal Templars of Temperance, and any select council of the order in the State of Michigan.")

§591. Happy Home Clubs.

Act No. 85 of the Public Acts of 1893; 2 C. L. 1915, (10374) et seq. ("An Act to provide for the incorporation of the senate and local clubs of the Happy Home Clubs of America.")

§592. Independent Order of Rechabites.

Act No. 67 of the Public Acts of 1895; 2 C. L. 1915, (10383) et seq. ("An Act to provide for the incorpora-

tion of tents of the Independent Order of Rechabites in North America.")

§593. Temperance Volunteers Association.

Act No. 82 of the Public Acts of 1897; 2 C. L. 1915, (10390) et seq. ("An Act to provide for the incorporation of Temperance Volunteers Association within the State of Michigan.")

§594. Co-operative Associations.

Act No. 192 of the Public Acts of 1883; 2 C. L. 1915, (9858) et seq. ("An Act relating to cooperative or associations organized under chapter ninety-four, of the compiled laws of eighteen hundred and seventy-one, and repealing all acts and parts of acts inconsistent herewith.")

§595. Co-operative and Mutual Benefit Associations.

Act No. 104 of the Public Acts of 1869; 2 C. L. 1915, (9846) et seq. ("An Act to provide for the incorporation of cooperative and mutual benefit associations.")

§596. Co-operative and Mutual Benefit Associations.

Act No. 73 of the Public Acts of 1879; 2 C. L. 1915, (9853) et seq. ("An Act to facilitate the transaction of the business of co-operative and mutual benefit associations.")

§597. Covenant Benefit Association.

Act No. 48 of the Public Acts of 1883; 2 C. L. 1915, (9865) et seq. ("An Act to authorize the covenant benefit association of Michigan, and the covenant mutual association of Illinois, and any other association (associations) organized for the benefit of members of the Independent

Order of Odd Fellows, to unite and consolidate their associations for the transactions in this State of the general business for which both associations have been organized.")

§598. Notice of Amendments of Charters of Corporations.

Act No. 117 of the Public Acts of 1851; 3 C. L. 1915, (11347) et seq. ("An Act to provide for notice of application for alterations and amendments of the charters of corporations.")

§599. Bridge Companies.

Act No. 83 of the Public Acts of 1851; 2 C. L. 1915, (8736) et seq. ("An Act to authorize the incorporation of Bridge Companies.")

§600. Logging Companies.

Act No. 40 of the Public Acts of 1855; 2 C. L. 1915, (8621) et seq. ("An Act to provide for the formation of companies for running, driving, booming and rafting logs, timber and lumber, and for regulating the floatage thereof.")

§601. Logging Companies.

Act No. 16 of the Public Acts of 1864; 2 C. L. 1915, (8629) et seq. ("An Act to authorize the formation of corporations for the running, booming and rafting of logs.")

§602. Plank Road Associations.

Act No. 62 of the Public Acts of 1848; 2 C. L. 1915, (8649) et seq. ("An Act relative to Plank Roads.")

§603. Plank Road Associations.

Act No. 155 of the Public Acts of 1851; 2 C. L. 1915, (8679) et seq. ("An Act to provide for the formation of companies to construct plank roads.")

§604. Plank Road Associations.

Act No. 122 of the Public Acts of 1855; 2 C. L. 1915, (8731) et seq. ("An Act relative to Plank Road Companies.")

§605. Sons of Veterans.

Act No. 153 of the Public Acts of 1891; 2 C. L. 1915, (10214) et seq. ("An Act to provide for the incorporation of subordinate camps of the Sons of Veterans.")

§606. Boards of Trade.

Act No. 166 of the Public Acts of 1863; 2 C. L. 1915, (8936) et seq. ("An Act for the incorporation of Boards of Trade and Chambers of Commerce.")

§607. Lumberman's Exchange.

Act No. 239 of the Public Acts of 1879; 2 C. L. 1915, (8496) et seq. ("An Act to authorize the formation of lumberman's [lumbermen's] exchanges.")

§608. Business Men's Associations.

Act No. 190 of the Public Acts of 1887; 2 C. L. 1915, (8954) et seq. ("An Act to provide for the incorporation of the Michigan Business Men's Association and Auxiliary Associations.")

§609. Merchants' and Traders' Associations.

Act No. 299 of the Public Acts of 1887; 2 C. L. 1915, (8962) et seq. ("An Act to provide for the incorporation of Merchants' and Traders' Associations.")

§610. Mining Companies.

Act No. 113 of the Public Acts of 1877; 2 C. L. 1915, (8967) et seq. ("An Act to revise the laws providing for the incorporation of companies for mining, smelting, and manufacturing iron, copper, silver, mineral coal, and other ores or minerals, and to fix the duties and liabilities of such corporations.")

§611. Mining Companies.

Act No. 142 of the Public Acts of 1889; 2 C. L. 1915, (9012) et seq. ("An Act to provide for the re-organization of corporations for mining, smelting and manufacturing iron, copper, silver, mineral coal and other ores or minerals, the term of existence of which has heretofore expired, and may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations.")

§612. Manufacturing and Mercantile Companies.

Act No. 232 of the Public Acts of 1903; 2 C. L. 1915, (9017) et seq. ("An Act to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations.")

§613. Associations Not for Profit.

Act No. 171 of the Public Acts of 1903; 2 C. L. 1915, (9054) et seq. ("An Act for the incorporation of associations not for pecuniary profit.")

§614. Foreign Corporations.

Act No. 206 of the Public Acts of 1901; 2 C. L. 1915, (9063) et seq. ("An Act to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan.")

§615. Upper Peninsular Companies.

Act No. 120 of the Public Acts of 1877; 2 C. L. 1915, (9077) et seq. ("An Act to promote the mining interest of the Upper Peninsula of this State by enabling persons and corporations engaged in mining to establish and maintain mills for stamping and working ores and minerals.")

§616. Oil Companies.

Act No. 167 of the Public Acts of 1907; 2 C. L. 1915, (9084) et seq. ("An Act to provide for the incorporation of companies for the purpose of prospecting for, manufacturing or refining oil.")

§617. Renewing Mining and Manufacturing Associations.

Act No. 16 of the Public Acts of 1882; 2 C. L. 1915, (9085) et seq. ("An Act to provide for renewing the incorporation of companies organized for mining and manufacturing purposes.")

§618. Institutions of Learning.

Act No. 39 of the Public Acts of 1855; 2 C. L. 1915, (10642) et seq. ("An Act to provide for the incorporation of Institutions of Learning.")

§619. College Associations.

Act No. 231 of the Public Acts of 1911; 2 C. L. 1915, (10658) et seq. ("An Act to provide for the incorporation of Colleges.")

§620. Kindergarten Associations.

Act No. 359 of the Public Acts of 1913; 2 C. L. 1915, (10668) et seq. ("An Act to provide for the incorporation of Kindergarten Institutions of Learning, to prescribe the powers and fix the duties and liabilities of such corporation.")

§621. Academies and Literary Institutions.

Act No. 19 of the Public Acts of 1839; 2 C. L. 1915, (10674) et seq. ("An Act requiring certain returns to be made from incorporated academies and other literary institutions.")

§622. Scholarships.

Act No. 191 of the Public Acts of 1893; 2 C. L. 1915, (10676) et seq. ("An Act to provide for the incorporation of associations for the purpose of establishing scholarships, in the University of Michigan, for the benefit of graduates of the High Schools of the State.")

§623. Literary and Scientific Associations.

Act No. 160 of the Public Acts of 1895; 3 C. L. 1915, (10689) et seq. ("An Act to authorize the formation of

'corporations for literary and scientific purposes, and to repeal an act entitled 'An Act to authorize the formation of corporations for literary and scientific purposes,' approved March twenty-first, eighteen hundred sixty-five, as amended by act number eighteen of the session laws of eighteen sixty-seven, and act number seventy-two of the session laws of eighteen seventy-nine.")

§624. Societies for the Study of Literature.

Act No. 200 of the Public Acts of 1897; 3 C. L. 1915, (10698) et seq. ("An Act to incorporate societies for the study of literature, for general culture and for educational and philanthropic work.")

§625. Polytechnic Associations.

Act No. 95 of the Public Acts of 1869; 3 C. L. 1915, (10703) et seq. ("An Act to provide for the establishment of Polytechnic Associations.")

§626. Historical, Etc., Societies.

Act No. 156 of the Public Acts of 1873; 3 C. L. 1915, (10710) et seq. ("An Act to provide for the incorporation of State, county, or municipal, historical, biographical and geographical societies.")

§627. Associations for Intellectual, Scientific, Etc., Culture.

Act No. 29 of the Public Acts of 1899; 3 C. L. 1915, (10718) et seq. ("An Act to authorize the formation of corporations for intellectual, scientific, aesthetic, spiritual, liberal culture or enquiry, and to repeal an act entitled 'An Act to authorize the formation of associations for intellectual, scientific, aesthetic, spiritual, religious or liberal cul-

ture,' approved May twentieth, eighteen hundred seventy-nine, being chapter one hundred forty-seven of Howell's Annotated Statutes.")

§628. Engineering Societies.

Act No. 128 of the Public Acts of 1857; 3 C. L. 1915, (10788) et seq. ("An Act to incorporate engineering societies.")

§629. Musical Societies.

Act No. 128 of the Public Acts of 1857; 3 C. L. 1915, (10794) et seq. ("An Act for the incorporation of Musical Societies.")

§630. Benevolent Societies.

Act No. 155 of the Public Acts of 1879; 3 C. L. 1915, (10802) et seq. ("An Act to provide for the incorporation of Benevolent Societies.")

§631. Charitable Societies.

Act No. 166 of the Public Acts of 1899; 3 C. L. 1915, (10808) et seq. ("An Act for the incorporation of Charitable Societies.")

§632. Charitable Societies.

Act No. 20 of the Public Acts of 1855; 3 C. L. 1915, (10816) et seq. ("An Act for the incorporation of Charitable societies.")

§633. Homes for Aged.

Act No. 52 of the Public Acts of 1897; 3 C. L. 1915, (10823) et seq. ("An Act authorizing the incorporation of homes for aged, infirm or indigent men and women.")

§634. Industrial and Other Charitable Schools.

Act No. 135 of the Public Acts of 1867; 3 C. L. 1915, (10832) et seq. ("An Act for the incorporation of Industrial and other Charitable Schools.")

§635. Hospital Associations.

Act No. 242 of the Public Acts of 1863; 3 C. L. 1915, (10840) et seq. ("An Act for the incorporation of hospitals or asylums in cases where valuable grants or emoluments have been made to trustees for such purpose.")

§636. Boards of Control of Hospitals.

Act No. 308 of the Public Acts of 1907; 3 C. L. 1915, (10849) et seq. ("An Act to provide for the incorporation of boards of control of hospitals, asylums, homes for the care of indigent, aged or infirm persons, or other charitable institutions.")

§637. Ecclesiastical Bodies.

Act No. 209 of the Public Acts of 1897; 3 C. L. 1915, (10889) et seq. ("An Act to revise, amend and consolidate the laws for the incorporation of Ecclesiastical Bodies.")

§638. Re-organization of Religious, Etc. Societies.

Act No. 110 of the Public Acts of 1889; 3 C. L. 1915, (10900) et seq. ("An act to provide for the re-organization of corporations or associations for religious, charitable, benevolent or educational purposes, the corporate term of existence of which has heretofore expired, or may hereafter expire by limitation, and to fix the duties and liabilities of such renewed corporations or associations.")

§639. Association of Trustees, Etc. to Receive Moneys.

Act No. 113 of the Public Acts of 1887; 3 C. L. 1915, (10903) et seq. ("An Act to authorize the trustees, vestrymen, consistory, or other governing body of any religious society incorporated under the laws of this State, to receive money by gift or bequest when the same is to be invested and the income thereof applied in payment or part payment of the salary of their minister, priest, rector, parson or clergyman.")

§640. Associations of Trustees, Etc. to Manage Gifts.

Act No. 89 of the Public Acts of 1901; 3 C. L. 1915, (10904) et seq. ("An Act to provide for the incorporation of trustees to take, hold, invest, sell and otherwise manage and control property of religious denominations, subject to the regulations of representative bodies of such denominations.")

§641. Religious Societies.

Act No. 141 of the Public Acts of 1905; 3 C. L. 1915, (10910) et seq. ("An Act to provide for exercise by religious societies of corporate powers for certain purposes.")

§642. Associations for Charitable, Etc. Purposes.

Act No. 256 of the Public Acts of 1903; 3 C. L. 1915, (11103) et seq. ("An Act to provide for the amendment of the articles of association of corporations or associations for charitable, religious, benevolent and educational purposes.")

§643. Young Men's Christian Associations.

Act No. 74 of the Public Acts of 1895; 3 C. L. 1915, (11105) et seq. ("An Act to provide for the incorpora-

tion of the State Association of Young Men's Christian Associations of the State of Michigan.")

§644. Students' Christian Association.

Act No. 31 of the Public Acts of 1897; 3 C. L. 1915, (11112) et seq. ("An Act to provide for the incorporation of the Students' Christian Association of the University of Michigan.")

§645. Cane and Sugar Beet Association.

Act No. 268 of the Public Acts of 1881; 2 C. L. 1915, (1897) et seq. ("An Act to encourage the culture of cane and the sugar beet, and the manufacturing of sugar from the same.")

§646. Mint Growers' Association.

Act No. 315 of the Public Acts of 1887; 2 C. L. 1915, (7901) et seq. ("An Act to provide for the incorporation of central and local associations of growers of mint and other essential oil plants.")

§647. Ferry Companies.

Act No. 96 of the Public Acts of 1871; 2 C. L. 1915, (8753) et seq. ("An Act to provide for the incorporation of Ferry Companies.")

§648. Mechanics' and Labormen's Co-operative Association.

Act No. 288 of the Public Acts of 1865; 2 C. L. 1915, (9837) et seq. ("An Act to authorize the formation of mechanics' and labormen's cooperative associations.")

§649. Co-operative Companies and Associations.

Act No. 398 of the Public Acts of 1913; 2 C. L. 1915, (9050) et seq. ("An Act to provide for the organization, regulation and conduct of co-operative companies and associations.")

§650. Finnish Temperance Friends' Association.

Act No. 97 of the Public Acts of 1897; 3 C. L. 1915, (10358) et seq. ("An Act to provide for the incorporation of the Finnish Temperance Friends' Association of America.")

§651. Fine Arts Association.

Act No. 233 of the Public Acts of 1865; 3 C. L. 1915, (10738) et seq. ("An Act to provide for the incorporation of associations for the encouragement of the Fine Arts.")

§652. Art Association.

Act No. 3 of the Public Acts of 1885; 3 C. L. 1915, (10759) et seq. ("An Act for the formation of corporations for the cultivation of Art.")

§653. Art Association.

Act No. 245 of the Public Acts of 1913; 3 C. L. 1915, (10777) et seq. ("An Act for the formation of corporations for the cultivation of Art.")

§654. Ursuline Academies Association.

Act No. 135 of the Public Acts of 1899; 3 C. L. 1915, (10972) et seq. ("An Act to provide for the incorporation of Ursuline Academies.")

§655. Ecclesiastical Seminaries Association.

Act No. 121 of the Public Acts of 1915; 3 C. L. 1915, (10977) et seq. ("An Act for the incorporation of ecclesiastical seminaries for the higher and doctrinal education of persons intending to enter upon the ministry of the gospel.")

§656. Evangelical Lutheran Deaf Mute Institution.

Act No. 28 of the Public Acts of 1901; 3 C. L. 1915, (10998) et seq. ("An Act to provide for the incorporation of Evangelical Lutheran deaf mute institutions.")

§657. Allegemeiner Evangelisch Lutherischer Bunds.

Act No. 212 of the Public Acts of 1903; 3 C. L. 1915, (11039) et seq. ("An Act authorizing the incorporation of the Allegemeiner Evangelisch Lutherischer Bunds of the State of Michigan, belonging to the Synod of Ohio.")

§658. Prevention of Cruelty to Children Association.

Act No. 161 of the Public Acts of 1893; 3 C. L. 1915, (11206) et seq. ("An Act to authorize the formation of corporations for the prevention of cruelty to children.")

§659. Prevention of Cruelty to Animals Association.

Act No. 119 of the Public Acts of 1877; 3 C. L. 1915, (11206) et seq. ("An Act to authorize the formation of corporations for the prevention of cruelty to animals and fowls.")

§660. Prevention of Cruelty to Children, Animals, etc.

Act No. 206 of the Public Acts of 1899; 3 C. L. 1915, (11213) et seq. ("An Act to authorize the formation of corporations for the prevention of cruelty to children, animals and fowls.")

§661. Institutions for the Treatment of Disease.

Act No. 108 of the Public Acts of 1893; 3 C. L. 1915, (11219) et seq. ("An Act to provide a general law under which corporations may be formed to carry on institutions for the treatment of disease and for instruction therein and in hygiene.")

§662. Firemen's Associations.

Act No. 111 of the Public Acts of 1879; 3 C. L. 1915, (11246) et seq. ("An Act authorizing the formation of bodies corporate to be known as firemen's associations of the State of Michigan.")

§663. Companies for the Apprehension of Horse Thieves.

Act No. 217 of the Public Acts of 1859; 3 C. L. 1915, (11251) et seq. ("An Act to authorize the formation of companies for the detection and apprehension of horse thieves and other felons, and defining their powers.")

§664. Detective Associations.

Act No. 261 of the Public Acts of 1879; 3 C. L. 1915, (11260) et seq. ("An Act to provide for the incorporation of state detective associations.")

§665. Fire Alarm Associations.

Act No. 168 of the Public Acts of 1903; 3 C. L. 1915, (11268) et seq. ("An Act to provide for the incorporation of companies for constructing, furnishing and operating electric and other fire, burglary and emergency alarms, and for conducting notification and emergency business, and to repeal act number eighty-five of the public acts of eighteen hundred ninety-one.")

§666. Equal Suffrage Associations.

Act No. 191 of the Public Acts of 1891; 3 C. L. 1915, (11277) et seq. ("An Act to provide for the incorporation of equal suffrage associations within the State of Michigan.")

§667. Commercial, Etc. Associations.

Act No. 253 of the Public Acts of 1897; 3 C. L. 1915, (11305) et seq. ("An Act to provide for the incorporation of commercial, mercantile, collection and reporting agencies.")

§668. Fruit and Farm Products Association.

Act No. 35 of the Public Acts of 1899; 3 C. L. 1915, (11311) et seq. ("An Act to provide for the incorporation of associations to promote the business of growing, handling, storing and selling fruit and other farm products.")

§669. Loan-Funds Association.

Act No. 250 of the Public Acts of 1899; 3 C. L. 1915, (11321) et seq. ("An Act to provide for the incorporation of associations for the purpose of establishing loan-funds for the benefit of school scholars and students of this State, to assist them to attend the University of Michigan, the State Normal College at Ypsilanti, the Central Michigan Normal School at Mt. Pleasant, the Michigan State Agricultural College at Lansing, the College of Mines at Houghton, or the Manual Training Schools of this State.")

§670. Co-operative Associations.

Act No. 239 of the Public Acts of 1917. ("An Act to provide for the organization, operation and regulation of co-operative corporations, companies and associations.")

(7897)	(8665)	(8721)	(8954)	(9010)	(9068)	(9962)	(10161)
(7898)	(8666)	(8722)	(8955)	(9011)	(9069)	(9963)	(10162)
(7899)	(8667)	(8723)	(8956)	(9012)	(9070)	(9964)	(10163)
(7900)	(8668)	(8724)	(8957)	(9013)	(9071)	(9965)	(10164)
(7901)	(8669)	(8725)	(8958)	(9017)	(9072)	(10098)	(10165)
(7902)	(8670)	(8726)	(8959)	(9018)	(9077)	(10099)	(10166)
(7903)	(8671)	(8727)	(8960)	(9019)	(9078)	(10100)	(10167)
(7904)	(8672)	(8728)	(8961)	(9020)	(9084)	(10101)	(10168)
(7905)	(8673)	(8729)	(8962)	(9021)	(9085)	(10102)	(10169)
(7906)	(8674)	(8730)	(8963)	(9022)	(9086)	(10103)	(10170)
(7907)	(8675)	(8731)	(8964)	(9023)	(9837)	(10104)	(10171)
(7908)	(8676)	(8732)	(8965)	(9024)	(9838)	(10105)	(10172)
(8621)	(8677)	(8733)	(8966)	(9025)	(9839)	(10106)	(10173)
(8622)	(8678)	(8734)	(8967)	(9026)	(9840)	(10107)	(10174)
(8623)	(8679)	(8735)	(8968)	(9027)	(9841)	(10108)	(10175)
(8624)	(8680)	(8736)	(8969)	(9028)	(9842)	(10109)	(10176)
(8625)	(8681)	(8737)	(8970)	(9029)	(9843)	(10110)	(10177)
(8626)	(8682)	(8738)	(8971)	(9030)	(9844)	(10111)	(10178)
(8627)	(8683)	(8739)	(8972)	(9031)	(9845)	(10112)	(10179)
(8628)	(8684)	(8740)	(8973)	(9032)	(9846)	(10113)	(10180)
(8629)	(8685)	(8741)	(8974)	(9033)	(9847)	(10114)	(10181)
(8630)	(8686)	(8742)	(8975)	(9034)	(9848)	(10115)	(10182)
(8631)	(8687)	(8743)	(8976)	(9035)	(9849)	(10116)	(10183)
(8632)	(8688)	(8744)	(8977)	(9036)	(9850)	(10117)	(10184)
(8633)	(8689)	(8745)	(8978)	(9037)	(9851)	(10118)	(10185)
(8634)	(8690)	(8746)	(8979)	(9038)	(9852)	(10119)	(10186)
(8635)	(8691)	(8747)	(8980)	(9039)	(9853)	(10120)	(10187)
(8636)	(8692)	(8748)	(8981)	(9040)	(9854)	(10121)	(10188)
(8637)	(8693)	(8749)	(8982)	(9041)	(9855)	(10122)	(10189)
(8638)	(8694)	(8750)	(8983)	(9042)	(9856)	(10123)	(10190)
(8639)	(8695)	(8751)	(8984)	(9043)	(9857)	(10124)	(10214)
(8640)	(8696)	(8752)	(8985)	(9044)	(9858)	(10125)	(10215)
(8641)	(8697)	(8753)	(8986)	(9045)	(9859)	(10126)	(10216)
(8642)	(8698)	(8754)	(8987)	(9046)	(9860)	(10127)	(10217)
(8643)	(8699)	(8755)	(8988)	(9047)	(9861)	(10128)	(10218)
(8644)	(8700)	(8756)	(8989)	(9048)	(9862)	(10129)	(10317)
(8645)	(8701)	(8757)	(8990)	(9049)	(9863)	(10143)	(10318)
(8646)	(8702)	(8758)	(8991)	(9050)	(9864)	(10144)	(10319)
(8647)	(8703)	(8759)	(8992)	(9051)	(9865)	(10145)	(10320)
(8648)	(8704)	(8760)	(8993)	(9052)	(9866)	(10146)	(10321)
(8649)	(8705)	(8761)	(8994)	(9053)	(9867)	(10147)	(10322)
(8650)	(8706)	(8762)	(8995)	(9054)	(9868)	(10148)	(10323)
(8651)	(8707)	(8763)	(8996)	(9055)	(9950)	(10149)	(10324)
(8652)	(8708)	(8764)	(8997)	(9056)	(9951)	(10150)	(10325)
(8653)	(8709)	(8765)	(8998)	(9057)	(9952)	(10151)	(10326)
(8654)	(8710)	(8766)	(8999)	(9058)	(9953)	(10152)	(10327)
(8655)	(8711)	(8936)	(9000)	(9059)	(9954)	(10153)	(10328)
(8656)	(8712)	(8937)	(9001)	(9060)	(9955)	(10154)	(10329)
(8657)	(8713)	(8938)	(9002)	(9061)	(9956)	(10155)	(10330)
(8658)	(8714)	(8939)	(9003)	(9062)	(9957)	(10156)	(10331)
(8659)	(8715)	(8940)	(9004)	(9063)	(9958)	(10157)	(10332)
(8660)	(8716)	(8941)	(9005)	(9064)	(9959)	(10158)	(10333)
(8661)	(8717)	(8942)	(9006)	(9065)	(9960)	(10159)	(10334)
(8662)	(8718)	(8943)	(9007)	(9066)	(9961)	(10160)	(10335)
(8663)	(8719)	(8944)	(9008)	(9067)			
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(10389) (10688) (10753) (10807) (10896) (11115) (11252) (11348)
(11449)

PART V, CHAPTER 3, SECTION 2

§671. Corporations Continued Under This Act.

Corporations Subject to This Act.

All such corporations, whose act of incorporation is repealed by this act, heretofore organized and incorporated under or subject to the laws of this State, shall hereafter be subject to the provisions of this act without formal reorganization hereunder; but each such corporation shall have, under its existing charter or corporate franchise, all of the powers, rights, privileges and immunities granted and conferred upon it by the law under which such corporation was incorporated, and notwithstanding such law may be repealed by this act; and nothing in this act contained shall be taken or construed to limit, restrict, or modify any such corporation in the exercise of its existing powers, rights, privileges or franchises, or as working a change upon its manner of operating, or as imposing any new mode of operation upon any such existing corporation. In all cases the charter, articles and by-laws of each such corporation as existing at the time this act takes effect may be altered or amended to include any right, power or privilege or as to any matter, subject or thing provided for in such law under which such existing corporation was organized, and no such amendment or alteration shall be deemed to be unlawful because inconsistent with or not expressly covered by the provisions of this act: *Provided, however,* That upon reorganization, or upon renewing any corporate term, such reorganization and such renewal shall be accomplished only in the manner, and under the limitations and restrictions imposed by the provisions of this act.[1]

This act is ordered to take immediate effect. Approved April 26, 1921.

COMMENTARIES ON THE SECOND SECTION OF CHAPTER 3, PART V

§672. Status of Corporations Whose Enabling Acts are Repealed.

1. Act 84 of 1921 repeals 101 preexisting corporation acts. Many hundreds of corporations of widely differing classes are affected. The evident purpose of the legislature was to make the transition of such corporations from the old act to the new free from detriment or inconvenience.

The preservation of rights, powers and privileges enjoyed under preexisting acts is sweeping. If the legislature possessed power to confer these advantages in the first instance, the power to preserve them is beyond question. The wisdom of the legislative action is not open to review by the courts. 25 R. C. L. §272, p. 1040; 6 R. C. L. §108, p. 109.

A New Law

§672a. An Act to Promote Conservation of Natural Resources.

AN ACT to promote conservation and development of the natural resources of this state by authorizing the formation of corporations for the purpose of damming, excavating, constructing and maintaining water courses with water power appurtenant thereto, for manufacturing, selling and supplying to the public generally water and water power, electricity and electric power or any other kind of power and for providing for and giving to such corporations and also to corporations heretofore lawfully organized for such purposes the right to condemn private property for such use, declaring the same to be a public use, and that lands so condemned shall be state property and be leased to such corporation upon such terms as are agreed or determined upon.

The People of the State of Michigan enact:

SECTION 1. *That any number of persons not less than three may form a corporation, for the purpose of accumulating, storing, manufacturing, conducting, selling, furnishing and supplying to the public generally water and water power, and for electricity and electric power, or any other kind of power, by executing under their hands and seals, articles of incorporation in manner and form as required by certain other corporations by the provisions of part one, chapter two of act number eighty-four, public acts of nineteen hundred twenty-one, of Michigan and amendments thereto, and thereupon such corporations shall have and enjoy all the powers and privileges of corporations for pecuniary profit organized under said act number eighty-four of public acts of nineteen hundred twenty-one of Michigan, and amendments thereto.*

SECTION 2. *Every such corporation, organized as provided in section one of this act, shall also have the following powers:*

First, To cause such examinations and surveys for all proposed improvements to be made, as may be necessary to prepare for the work to be done;

Second, To acquire by lease, purchase, grant and donation all such lands, real estate, flowage rights, water power and other property, and any interest therein, as may be deemed necessary to carry out its corporate purposes;

Third, To dam any stream or streams, and to excavate, construct, maintain, repair and improve any existing stream or canal, or which it may excavate and construct, with water power appurtenant thereto;

Fourth, To flood, flow and submerge its land and property by constructing the necessary dams in any canal or in creeks, streams or other water courses, natural or atrificial;

Fifth, To condemn all lands and any and all interest therein which may be necessary to the carrying on of its business of manufacturing and furnishing power for public use, including all lands necessary for transmitting electricity, electric current or other power across streams, highways and private property, such condemnation proceedings in all cases to be carried on and determined under and subject to the same rules and forms, as near as practicable, as are provided and required for the acquisition of lands for right of way of steam railroad lines within the state of Michigan, when the railway company is unable to agree with the owners thereof for the purchase of such lands: Provided, however, That any such corporation organized under this act shall, before commencement of any such condemnation proceedings, first have submitted by petition its plans and survey of all lands to be used for, and also of all lands sought to be condemned as necessary for, the carrying on of its business and the furnishing of power for the public use, to the Michigan public utilities commission, and the commission shall first have issued its certificate of such corporation certifying that in its opinion the acquisition of said lands by condemnation proceedings is necessary for said purposes and for the public use, and the commission having so certified then such proposed use by such corporation is hereby declared to be a public use, and such corporation shall thereupon have the right to institute and prosecute to determination condemnation proceedings as above provided, questions of public necessity and compensation to be submitted and determined as in proceedings for the condemnation of lands for right of way of steam railroad companies in this state, in accordance with the constitution and statutes of this state in such case made and provided: And further provided, That such corporation shall first have acquired by negotiation and purchase, and without condemnation proceedings or exercise of the power of eminent domain, from the owners thereof at least seventy-five per cent in area of all the lands necessary for the completion of any particular project or power plant or unit and of all lands necessary to be overflowed in the operation of said project or power unit: And further provided, That title to any lands condemned under the provisions of this act shall reveri to the original owner thereof unless put to the use for which so condemned within five years

THE MICHIGAN CORPORATION FEE AND TAX LAW

(Act No. 85 Public Acts 1921, p. 189).

(References are to annotator's sections)

TITLE.

§673. Title.

The Title.

AN ACT prescribing the fees, taxes and charges to be paid to the state by corporations doing or seeking to do business in this state; prescribing the method and basis of computing such fees, taxes and charges; requiring certain annual reports to be filed by corporations; providing for the disposition of the moneys received under this act and prescribing penalties for non-compliance with the provisions thereof.

COMMENTARIES ON THE TITLE OF THE FEE AND TAX LAW

§674. Object of the Act.

The Object of This Act is revenue. This is apparent from the title. Therefore, it is believed that the title complies with the constitutional requirement that, "No law shall embrace more than one object, which shall be expressed in its title. §21 Art. V Mich. Const. 1908. The constitutional provision is satisfied "when the law has but one general object, which is fairly indicated by its title." People v. Mahaney, 13 Mich. 481, 495 (1865).

The Fee and Tax Law, Section 1

§675. General Fees of Secretary of State.

The People of the State of Michigan enact:

General Fees. *Section 1.* Hereafter the fees to be paid to the Secretary of State by or in behalf of corporations, for the purposes herein specified, shall be as follows: For filing, examining and certifying articles of domestic corporations, five dollars; for filing and examining articles or certificates of incorporation, and other papers connected with the application of a foreign corporation for admission to do business in Michigan, ten dollars; for filing and examination of any annual or special report required by law, two dollars; for examining, filing and certifying any amendment to the articles, either of domestic or foreign corporations, five dollars; for filing and examining any notice of final dissolution or change of attitude, five dollars; for preservation of records at the request of any corporation voluntarily dissolved, ten dollars; for certifying any part of the files or records pertaining to a corporation for which no other provision is herein made, a minimum charge of one dollar for each certificate, and fifty cents per folio for the matter so certified

Franchise Fee. to; for certifying and forwarding the record of any determination of a franchise fee to the appeal board, ten dollars; all of which fees shall be paid by the corporation at the time of filing or when the service is rendered by the Secretary of State. All such fees shall be in addition to the franchise fees prescribed in this act, and shall, when collected, be covered into the treasury of the state, and there be credited to the general fund.

from the time of such condemnation: Provided, also, That the title to any property acquired by condemnation proceedings under this act, shall ipso facto vest in the people of the state of Michigan, and such property shall thereupon be leased to such corporation for a term of not less than fifteen nor more than ninety-nine years, upon such reasonable terms as may be agreed upon by the state administrative board and such corporation, or if such agreement cannot be had, such corporation may apply by petition to the circuit court for the county in which said lands or property so condemned are situated, sitting in chancery, and said court shall thereupon settle and determine a reasonable rental, under all the circumstances, to be paid the state, and the terms and duration of said lease, which decision of said court shall be final, unless appealed from by either party as permitted in chancery appeals generally under the statutes in such case made and provided. Any leasehold interest acquired from the state under this act shall be subject to taxation the same as real estate.

SECTION 3. *Such corporation shall furnish and sell to the public generally such water power, electricity or electric power as it shall develop and generate in the carrying on of its business, upon such reasonable terms, rates and conditions as shall be determined from time to time by the Michigan public utilities commission and the commission may for that purpose examine all books and records of such corporation and audit the same, and any order of the commission may be reviewed, set aside, modified or affirmed in the manner provided by law for the review of orders of the commission pertaining to steam railroad companies.*

SECTION 4. *Corporations heretofore lawfully organized for the purpose specified in section one hereof shall have, and are hereby given, the right to condemn private property in accordance with the provisions of subdivision five of section two of this act and subject to the same conditions and requirements as therein specified.*

HISTORY: P. A. '23, Act No. 238, effective Aug. 30, '23.

SUPPLEMENTAL SHEETS TO FEE AND TAX LAW

Third Edition of 1922

AS

Amended by the Public Acts of 1922, 1923, 1925, 1926 and 1927

Amendment to the Statute

§676. Organization or Admittance Fees—Non-Profit Companies.

SECTION 2. Every corporation organized or doing business in this state, other than those doing business for a profit, shall, upon filing its articles, or, if a foreign corporation, upon filing its application for admission, pay to the secretary of state a fee of ten dollars for the privilege of exercising its franchises within this state, upon such organization or admission as the case may be; and at the time of filing each of its annual or other reports, as required by law, each such corporation, *except ecclesiastical or church corporations or Sunday school societies*, shall pay a further fee of ten dollars to the secretary of state, for the privilege of exercising such franchise within this state, for the period from the time of such report until the filing of the next succeeding report required by law.

Approved May 27, 1925.

HISTORY: P. A. '21, Act No. 85, as amended by P. A. '25, Act No. 385, effective August 27, '25.

The Fee and Tax Law, Section 2

§676. Organization or Admittance Fees—Non-Profit Companies.

Section 2. Every corporation organized or doing business in this state, other than those doing business for a profit, shall upon filing its articles, or, if a foreign corporation, upon filing its application for admission, pay to the Secretary of State a fee of ten dollars for the privilege of exercising its franchises within this state upon such organization or admission as the case may be; and at the time of filing each of its annual or other reports, as required by law, each such corporation shall pay a further fee of ten dollars to the Secretary of State, for the privilege of exercising such franchise within this state for the period from the time of such report until the filing of the next succeeding report required by law. Non-Profit Companies.

COMMENTARIES ON THE SECOND SECTION OF THE FEE AND TAX LAW

It will be observed that this provision is made applicable to all non-profit corporations, both foreign and domestic, organized, doing business, or, if foreign, making application for permission to do business, in this state.

The Fee and Tax Law, Section 3

§677. Organization or Admittance Fees—Profit Companies.

Section 3. Every domestic corporation hereafter organized for profit, and every foreign cor- Profit Companies.

Applying for Admission.

poration for profit, hereafter applying for admission to do business within this state, shall, at the time of filing its articles or applying for admission, as the case may be, pay to the Secretary of State, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to one mill upon the dollar for each dollar of the authorized capital stock of such corporation; and each corporation, heretofore or hereafter incorporated under the laws of or admitted to do business in this state, shall pay a proportionate fee upon each and any increase in its authorized capital stock made subsequent to the passage of this act: *Provided,* That, in the case of foreign corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property owned and used in Michigan: And *provided further,* That in no case, either as to a domestic or a foreign corporation, shall the organization fee be less than twenty-five dollars.

COMMENTARIES ON THE THIRD SECTION OF THE FEE AND TAX LAW

An increase of capital stock by an amendment adopted before the new law became effective, but filed afterwards, is not subject to the increased franchise fee. To hold otherwise would be to give the law retroactive operation, which was not intended by the legislature. Warren-Scharf Asphalt-Paving Co. v. Secretary of State, 115 Mich. 234 (1897).

An admittance fee paid, upon which license has been granted, cannot be recovered back, even though the privilege is not exercised. Moline Plow Co. v. Wilkinson, 105 Mich. 57, 60 (1895).

Amendment to the Statute

§677. Organization or Admittance Fee—Profit Companies.

SECTION 3. Every domestic corporation hereafter organized for profit, and every foreign corporation for profit, hereafter applying for admission to do business within this state, shall, at the time of filing its articles or applying for admission, as the case may be, pay to the secretary of state, as an organization fee and for the privilege of exercising its franchises within this state, a sum equal to *one-half* mill upon the dollar for each dollar of the authorized capital stock of such corporation; and each corporation heretofore, or hereafter incorporated under the laws of or admitted to do business in this state, shall pay a proportionate fee upon each and any increase in its authorized capital stock made subsequent to the passage of this act: *Provided*, That in case of a foreigh corporation, such fee shall be computed upon that portion of its authorized capital stock represented by the portion of its property owned and used in Michigan: And *provided further*, That in no case either as to a domestic or a foreign corporation, shall the organization fee be less than twenty-five dollars: *And provided further, That the rate of fees herein provided for, when applied to corporations organized under act number fifty of the Public Acts of eighteen hundred eighty-seven, as amended, and generally known as "building and loan associations," shall be one-tenth mill. The term "corporation" as used in this act shall be deemed to include partnership associations, limited, whether domestic or foreign, all joint stock associations having any of the powers of corporations, and such common law trusts or trusts created by statute of this or any other state or country exercising common law powers in the nature of corporations, in addition to such other corporations as are referred to in this act.*

HISTORY: P. A. '21, Act No. 85, as amended by P. A. '23, Act No. 233, effective August 30,' 22, as amended by P. A. '27, Act No. 37, effective September 5, '27.

to any person within their jurisdiction "the equal protection of the laws."

It is asserted by some, and denied by others—but at the time this note is written has not been judicially determined—that section 4 of the present act transgresses both constitutional inhibitions above stated. The question is not free from difficulty. The presumption of validity attends the act.

That the act imposes upon corporations engaged in identical pursuits burdens manifestly disproportionate to their wealth and ability to pay—that the act bears most heavily upon the poorer and the weaker companies—is hardly open to debate. A corporation having $1,000 authorized capital and surplus must pay as much as another having $14,000. A corporation having $2,900,000 must pay as much as one having $290,000,000, or any greater sum. It is claimed that this arbitrary imposition of unequal and disproportionate burdens upon corporations of the same kind and class violates the rule of uniformity.

Among the many cases cited in support of the act, the following are deemed noteworthy:

Kansas City, Fort Scott & Memphis R. Co. v. Botkin, 240 U. S. 227, 60 L. ed. 617 (1916);

Magoun v. Illinois Trust & Savings Bank, 179 U. S. 299, 42 L. ed. 1045 (1898);

Clark v. Titusville, 184 U. S. 329, 46 L. ed. 569 (1902);

Jasnowski v. Board of Assessors, 191 Mich. 287 (1916);

Flint v. Stone Tracy Co., 220 U. S. 107, 55 L. ed. 389 (1911);

Home Insurance Company of New York v. People of the State of New York, 184 U. S. 594, 33 L. ed 1025 (1890);

In re Fox's Estate, 154 Mich. 5 (1918); and

Amendment to the Statute

§679. Building and Loan Associations.

SECTION 4-*a*. Every building and loan association organized or doing business under the laws of this state shall at the time of filing its annual report as required by section seven hereof, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state an annual fee of *one-fourth* mill upon each dollar of its paid in capital and legal reserve. * * *

This act is ordered to take immediate effect.

a. The words omitted are: "but such privilege fee shall in no case be more than two thousand dollars."

HISTORY: P. A. '21, Act No. 85, as amended by P. A. '23, Act No. 23, effective August 30, '23, as amended by P. A. '27 Act No. 37, approved April 18, '27, and ordered to take immediate effect.

Amendment to the Statute

§680. Mining Companies.

SECTION 4-*b*. Every corporation organized for profit under the laws of this state or doing business in this state, principally engaged in the development of mines and mining of iron, copper, silver and other mineral ores within this state, shall, at the time of filing its annual report with the secretary of state as required by section seven hereof, for the privilege of exercising its franchise and of transacting its business within this state, pay to the secretary of state, an annual fee of *two* and one-half mills upon each dollar of the fair average value of its issued capital stock for the preceding year ending June thirty. In estimating the value of capital stock, the surplus and undivided profits shall be included but such fee shall in no case be less than *ten* dollars nor more than *fifty* thousand dollars.

HISTORY: P. A. '21, Act No. 85, as amended by P. A. '23, Act No. 233, effective August 30, '23.

St. Louis-San Francisco R. Co. v. Middlekamp,
65 L. ed. ——, Adv. Op. 576, decided May 2, 1921.

Application of §4 of Article X of the Michigan constitution of 1908 to a specific tax measured by paid-up capital and surplus is a matter of first impression. But it is said that a constitutional requirement of uniformity implies that "classification is allowed to correct inequalities, never to create them." 26 R. C. L. §216, p. 243.

The Fee and Tax Law, Section 4-a

§679. Annual Privilege Fee—Building and Loan Associations.

Building and Loan Associations.

Section 4-a. Every building and loan association organized or doing business under the laws of this state shall, at the time of filing its annual report as required by section seven hereof, for the privilege of exercising its franchise and of transacting its business within this state, pay to the Secretary of State an annual fee of one mill upon each dollar of its paid in capital and legal reserve, but such privilege fee shall in no case be more than two thousand dollars.

The Fee and Tax Law, Section 4-b

§680. Annual Privilege Fee—Mining Corporations.

Mining Corporations.

Section 4-b. Every corporation organized for profit under the laws of this state or doing business in this state, principally engaged in the development of mines and mining of iron, copper, silver, and other mineral ores within this state, shall, at the time of filing its annual report with the Secretary of State as required by section

Mineral Ores

Exercising Its Franchise.

seven hereof, for the privilege of exercising its franchise and of transacting its business within this state, pay to the Secretary of State, an annual fee of three and one-half mills upon each dollar of the fair average value of its issued capital stock for the preceding year ending June thirty. In estimating the value of capital stock, the surplus and undivided profits shall be included but such fee shall in no case be less than fifty nor more than ten thousand dollars.

COMMENTARIES ON THE FOURTH (B) SECTION OF THE FEE AND TAX LAW

As a matter of practice, a corporation whose capital stock is too great may reduce its tax liability by an amendment of its articles. Likewise it may reduce its surplus by declaring dividends. In the latter case the effect of the present federal income tax law is to be taken into consideration.

The Attorney General has ruled that all corporations which were not legally dissolved prior to July 1, 1921, will be required to file an annual report showing conditions at the close of business June 30, 1921, and pay the privilege fee.

Corporations may be readily dissolved by an amendment of their articles shortening their term of existence. A corporation whose charter has expired without renewal has no existence either de jure or de facto. It is dead. Attorney General v. Gay, 162 Mich. 612, 615 (1910). When dissolution has been accomplished by amendment, notice thereof, in triplicate, should be filed within thirty days. See ante §167.

The Fee and Tax Law, Section 5

§681. Impaired Capital, Interstate Commerce, Ex-State Property.

Section 5. In the case of computing the privilege fees prescribed in sections three and four of this act as to foreign corporations, such computation shall be made upon the proportion of the corporation's property owned and used in Michigan in the ratio that such property bears to the entire property of the corporation, and such ratio shall be applied by the Secretary of State to determine the amount of the authorized capital stock of such corporation owned and used in Michigan, and to determine what portion of the corporation's paid-up capital and surplus, severally, are owned and used in Michigan. The term "surplus," as used in this act, shall be taken and deemed to mean the net value of the corporation's property, less its outstanding indebtedness and paid-up capital; but in no case, either as to domestic or as to foreign corporations, shall any deduction be made from the item of paid-up capital, in computing the privilege fee thereon, by reason of any impairment of the same None of the property or capital, of any corporation subject to paying the privilege fee prescribed in section four which is located without the state of Michigan, and none of the capital or surplus of such corporation represented by property exclusively used in interstate commerce, shall in any case enter into the computation of the net amount of the authorized capital, or the capital and surplus, as the case may be, upon which the computation of the privilege fees shall be made, and the Secretary of State shall in all such cases

Impaired Capital.

Capital or Surplus.

Detailed Information.

be authorized to require the corporation to furnish detailed and exact information touching such several matters before making a final determination of the privilege fee to be paid by such corporation. For the purpose of this act only, each share of no par value shall be deemed to have the value of at least one dollar, or such value as shall have been fixed by the corporation for the sale of such stock, or the book value as determined by the Secretary of State, whichever may be the higher. In any case where the capital of a corporation is not divided into shares, the whole property thereof shall be deemed to be the authorized capital stock for the purpose of this act.

COMMENTARIES ON THE FIFTH SECTION OF THE FEE AND TAX LAW

A foreign corporation is taxable to the extent of its property within the state and no further. Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 29 L. ed. 158 (1885). Pullman Co. v. Kansas, 216 U. S. 56, 54 L. ed. 378 (1910); Southern Railroad Co. v. Greene, 216 U. S. 400, 54 L. ed. 536 (1910); International Paper Co. v. Massachusetts, 246 U. S. 135, 62 L. ed. 624, Ann. Cas. 1918-c 617.

It has been held that domestic corporations may be subjected to privilege taxes measured by the value of their entire property, both within and outside the state, even though a portion, or all, of such property be employed in interstate commerce. Kansas City, Fort Scott & Memphis R. Co. v. Botkin, 240 U. S. 227, 60 L. ed. 617 (1916); Society for Savings v. Coite, 6 Wall. 594, 18 L. ed. 897 (1868); Henderson Bridge Co. v. Kentucky, 166 U. S.

Section Repealed

§682. First Fee Covers First Period.

Repealed by P. A. '23, Act No. 233, approved May 23, '23, effective August 30, '23.

Amendment of the Statute

§682A. Penalties.

SECTION 6-*a*. In case any corporation required to file the report *as provided in this act*, and pay the fee or fees prescribed by law shall *make any wilfully false statement in such report, such corporation shall be subject to an additional penalty in the sum of fifty per cent of the amount of franchise fee required to be paid. Such penalty shall in no case be less than fifty dollars nor more than ten thousand dollars. In case any corporation required to file the report as provided by this act and pay the fee or fees prescribed by law shall fail or neglect to file* * * *[a] such report *and pay such fees* within the period required by law, such corporation shall, in addition to its liability for such privilege fee and interest thereon *and in addition to the penalties provided by sections six and seven hereof*, be subject to a penalty of one hundred dollars, and an additonial penalty of five dollars for each day's continuance of such failure or neglect, which penalty or penalties shall be collected in an action to be instituted by the Attorney General of this State as prescribed by law; and it shall be the duty of the Secretary of Sate to report to the Attorney General every case of such failure or neglect promptly.

This act is ordered to take immediate effect.

HISTORY: P. A. '21, Act No. 85, as amended by P. A. '25, Act No. 223, effective August 27, '25, as amended by P. A. '27, Act No. 72, approved April 26, '27, and ordered to take immediate effect. See Section ten.

a. The word omitted is: "make."

150, 41 L. ed. 953 (1897); New York v. Sohmer, 235 U. S. 549, 59 L. ed. 355 (1915); 26 R. C. L. §132, p. 162.

There is no legal reason why the property of a foreign corporation actually within a state may not be taken as the basis of computing a tax for the privilege of exercising its franchises in such state. 7 Fletcher Cyc. Corp. §4606, p. 8085.

The Fee and Tax Law, Section 6

§682. First Fee Covers First Period.

Reports.

Section 6. Every corporation, whether domestic or foreign, having paid the initial organization fee, or the admission fee, prescribed in sections two or three of this act, as the case may be, shall be deemed to have made a full payment of the annual or periodic privilege fee for such year of organization or admission.

The Fee and Tax Law, Section 7

§683. Reports.

First Fee.

Section 7. Every corporation, for profit, whether domestic or foreign, authorized or admitted to do business within this state, excepting only railroad companies and interurban railroad companies, and telephone and telegraph companies, and foreign insurance companies, shall, in the month of July or August of the year nineteen hundred twenty-one and annually thereafter in the same months, file a report with the Secretary of State showing its condition at the close of business upon the thirtieth day of June next preceding the filing of such report, which report shall be upon a form to be prescribed by the Secretary of State, and shall contain, among other statements, the name of the corporation,

Time Specified.

basis of the report. It will be remembered, however, that the report is a sworn statement of values used as a measure for taxation, hence no unreasonable or unfair understatement should be indulged. False books do not justify a false statement.

The property of the corporation is not subjected to this tax—it rests upon privileges only—hence non-taxable securities are not deductable.

A corporation having no tangible assets and no liabilities, nevertheless possesses the franchise to be and act as a corporation, and is taxable. So is an undissolved corporation in proces of liquidation; and so is a mere holding company. Until a corporation is legally dead, it has and enjoys franchises and is therefore subject to this tax.

The Fee and Tax Law, Section 8

§684. Receipts and Application of Fund.

Entitled to a Receipt.

Section 8. Every corporation paying any fee for any purpose to the Secretary of State shall be entitled to a receipt for the same, showing the time of payment and the purpose for which paid. All fees of every nature paid to the Secretary of State under the provisions of this act shall be covered into the state treasury and shall there be credited to the general fund of the state, and shall be available for any purpose for which such general fund is made available by law.

COMMENTARIES ON THE EIGHTH SECTION OF THE FEE AND TAX LAW

The state constitution provides that, "Every law which imposes, continues or revives a tax shall distinctly state

the tax, and the objects to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object." Mich. Const. 1908 Art. X, §6; Id. 1850, Art. XIV, §14.

Placing the proceeds of the tax to the credit of the general fund of the state is a sufficiently specific object. West inghausen v. People, 44 Mich. 265 (1880); Trowbridge v. City of Detroit, 99 Mich. 443 (1894). But it has been suggested that, under §1 of Art. 10 of the constitution of 1908, the proceeds of this tax upon franchises properly belongs to the primary school interest fund, and that the act is constitutionally defective in this respect. Chambe v. Judge of Probate, 100 Mich. 112 (1894); Union Trust Co. v. Probate Judge, 125 Mich. 487 (1901). Since the foregoing note was written, it has been held by the Supreme Court of Michigan: that in so far as Section 8 of Act No. 85 of 1921 attempts to divert to the general fund taxes arising from the franchise "to be" a corporation, that section is unconstitutional, but that the main portion of the tax (sections 4, 4a and 4b) imposed upon the franchise "to do," as distinguished from the franchise "to be," rest upon a new subject of taxation applicable to such purposes as the legislature may designate. Union Steam Pump Sales Co. v. Secretary of State, 216 Mich. 261, decided Dec. 5, 1921. For a different view upon the same subject see opinion of Hon. Arthur J. Tuttle, District Judge, in Republic Acceptance Corporation v. DeLand, 275 Fed. 632, decided October 1, 1921.

Both of the decisions above cited hold that the act is not unconstitutional for want of uniformity in the burden imposed.

The Fee and Tax Law, Section 9

§685. Appeals.

Appeals.

Section 9. The Attorney General as chairman thereof, the State Treasurer, and the Auditor

General as secretary thereof, shall constitute an appeal board for the purpose of hearing any appeals from the decision of the Secretary of State as to the amount of any privilege fee determined by him, and any corporation conceiving itself aggrieved as to the amount of such fee based upon the facts may appeal to such appeal board within ten days after such determination for a re-determination thereof. Such board shall be authorized to compute the fees in such case upon the same basis and by the same rules as are hereinbefore prescribed; and in all such cases the decision of such appeal board, as to the amount of such fees, shall be final, and shall be certified back to the Secretary of State as soon as made. Appeal Board.

COMMENTARIES ON THE NINTH SECTION OF THE FEE AND TAX LAW

Where the amount of an excise tax is dependent upon the value of property, the person assessed is entitled to be heard. The hearing may be before a quasi-judicial body. The fact that no right is given to review its proceedings is not denial of due process of law. 26 R. C. L. §305, p. 348, 349; Pittsburgh, Cincinnati, Chicago & St. Louis R. Co. v. Backus, 154 U. S. 421, 38 L. ed. 1031 (1894); State Railroad Tax Cases, 92 U. S. 575, 23 L. ed. 663 (1876).

The Fee and Tax Law, Section 10

§686. Penalties.

Section 10. In case any corporation required to file report and pay the fee or fees prescribed Penalties.

Period Required. in this act shall fail or neglect to make such report within the period required by law, such corporation shall, in addition to its liability for such privilege fee and interest thereon, be subject to a penalty of one hundred dollars, and an additional penalty of five dollars for each day's continuance of such failure or neglect, which penalty or penalties shall be collected in an action to be instituted by the Attorney General of this state as prescribed by law; and it shall be the duty of the Secretary of State to report to the Attorney General every case of such failure or neglect promptly.

COMMENTARIES ON THE TENTH SECTION OF THE FEE AND TAX LAW

As to penalties, see §559.

The Fee and Tax Law, Section 11

§687. Declaration of Legislative Intent.

Invalidity of Any Section. *Section 11.* Should any provision or section of this act be held to be invalid for any reason, such holding shall not be construed as affecting the validity of any remaining portion, hereof, it being the legislative intent that the act shall stand, notwithstanding the invalidity of any such provision or section.

COMMENTARIES ON THE ELEVENTH SECTION OF THE FEE AND TAX LAW

The declared legislative intent must be given effect by the courts if constitutional. 25 R. C. L. §275, p. 1049, 1050.

The Fee and Tax Law, Section 12

§688. Acts Repealed.

Section 12. All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. This act is deemed immediately necessary for the preservatior of the public peace, health and safety. Repeal.

This act is ordered to take immediate effect. Approved April 27, 1921.

CORPORATION FORMS

§689. Articles Profit Corporation.
§690. Articles Non-Profit Corporation.
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§737. Articles of Trustee Corporations.

FORMS

P. A. '21, Act No. 84

(References are to annotator's sections)

§689. Articles Profit Corporation.

(Corporation for Pecuniary Profit)

ARTICLES OF ASSOCIATION

OF

.....

.....

We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of 1921, entitled "An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities, to prescribe the conditions upon which corporations may exercise their franchises," etc., do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I

The name assumed by this association, and by which it shall be known in law, is

.....

.....

ARTICLE II

This corporation intends to proceed under Sec....., Chapter 1, Part I, of the above act.

ARTICLE III

The purpose or purposes of this corporation are as follows:

.....
.....
.....
.....
.....
.....
.....
.....
.....

ARTICLE IV

Principal place where company will operate is.....
.....
.....
in the county of....., State of.....
Address of main office in Michigan is.....
.....
.....
Address of main office outside of Michigan is.....
.....
.....
.....

ARTICLE V

The total capital stock authorized is.....
.....dollars and.....
shares of no par value.
The amount subscribed is.....
dollars and.....
shares of no par value.
The amount paid in is.....dollars.

The number of shares of common stock is.....
.....of the par value of.....
.....dollars each.

The number of shares of preferred stock is.....
.....of the par value of.....
.....dollars each.

The preferred stock shall be subject to redemption at par on the .....day of.....A. D., 19...., and the holder shall be entitled to a dividend of.....per cent per annum, payable.....which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock. The preferred stockholders shall.....be entitled to vote for directors.
.....
.....
.....

The number of shares of non-par value stock is.....
.....; the price of each is.....dollars.

Classes of no par value stock, basis of such classification, with number of shares in each class;.....
.....
.....
.....

Non-par shareholders shall.....be entitled to vote for directors.

Such shareholders shall be entitled to participate in dividends or assets of the corporation as follows:.....
.....
.....

Other classes, if any,.....
.....

Amount of common stock, paid for in cash is.....
.....dollars, and.....

dollars has been paid in other property, the description and valuation at which each item is taken, is as follows, viz.:

.....
.....
.....
.....
.....
.....
.....
.....

Amount of preferred stock, paid for in cash is.....
.....dollars, and.....dollars has been paid for in other property, the description and valuation at which each item is taken, is as follows, viz.:

.....
.....
.....
.....

Amount of non-par value stock, paid for in cash is....
.....dollars, and.....
dollars has been paid in other property, the description and valuation at which each item is taken, is as follows, viz.:

.....
.....

The amount of actual capital, in cash or property or both, which this corporation owned and possessed at the time of executing these articles is.....dollars.

ARTICLE VI

The term of this corporation is fixed at.....years.

ARTICLE VII

Names of stockholders, their residences and shares subscribed by each are:

NAMES	RESIDENCE (Give street address in cities)	NO. OF SHARES		
		Com.	Pref.	Non-Par Value

ARTICLE VIII

The names and addresses of officers and directors (or an attorney in fact) for the first year of the corporation's existence are as follows:

NAME	OFFICE	ADDRESS

ARTICLE IX

Any special statement or statements pertaining to the primary organization of this corporation and not included in the foregoing requirements may be set forth under this article.

.....

.....

.....

.....

.....

In witness whereof, we, the parties designated, as provided by law, by the parties associating as shown under Article VII of these articles, for the purpose of giving legal effect to these articles, hereunto sign our names this .....day of.....A. D., 19....
.....
.....
.....
.....
.....
.....
.....

AFFIDAVIT OF THE INCORPORATORS

STATE OF MICHIGAN }
} ss.
County of..... }

On this.....day of.....A. D., 192.., before me, a.....in and for said County, personally appeared.....
.....
.....
.....
.....
.....
known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
.....

My commission expires....., 192...

See §§72, 77, 82, 85, 88, 93, 101.

AFFIDAVIT OF ORGANIZERS AS TO PROPERTY VALUE EXCHANGED FOR STOCK

STATE OF MICHIGAN }
} ss.
County of..... }

.....
.....
.....
and .....
being duly sworn do depose and say that they are three of the organizers of the.....
.....
.....
.....
whose articles of association are hereto attached; that they know the property described in Article Five of such articles of association and taken in payment for capital stock, and that the same has been actually transferred to such corporation, and further say that said property is of the actual value of.....DOLLARS, and that stock valued at.....DOLLARS has been issued for the same.

And further say not.

Sign here. .....
.....
.....

Subscribed and sworn to before me this..... day of.....A. D., 19....

.....
.....
.....

My commission expires.....

NOTE: The foregoing form of affidavit is to be attached

to the articles in all cases where property is taken in payment for stock at the time of organization.

See §§84, 277, 279, 280.

§690. Articles Non-Profit Corporation.

(Official Form Prepared by Secretary of State)

(Non-Profit Corporations)

ARTICLES OF ASSOCIATION
OF

.....

We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of Michigan for 1921, providing for the "organization, regulation and classification of domestic corporations," etc., do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I

The name or title by which said corporation is to be known in law is.....

ARTICLE II

This corporation shall proceed under section ...., Chapter 1, Part I, of the above named act.

ARTICLE III

The purpose or purposes for which it is formed are as follows: .....

ARTICLE IV

The principal place of business shall be at..... in the county of.....

ARTICLE V

(a). The amount of assets which said corporation possesses is: Real property:.....Personal property:..... (b). Said corporation is to be financed under the following general plan:..... ..... Under the provisions of the above named act said corporation does.....intend to issue shares of stock, said shares to be in denominations of..... dollars each.

ARTICLE VI

The term of existence of this proposed corporation is fixed at.....years from the date of these articles.

ARTICLE VII

The incorporating members of the association are as follows:

NAMES RESIDENCE ADDRESSES

ARTICLE VIII

The names and addresses of the officers, trustees or directors (or attorney in fact) for the first year are as follows:

NAMES OFFICE ADDRESSES

.....

ARTICLE IX

(a). The qualifications required of officers and members are as follows:.....

(b). The following have been designated by resolution to sign and acknowledge these articles of association:

.....

.....

.....

ARTICLE X

Any other statement required by-law or desired by the incorporators to be included in the articles.....

IN WITNESS WHEREOF, We, the parties designated, as provided by law, by the parties associating as shown under Article VII of these articles, for the purpose of giving legal effect to these articles, hereunto sign our names this..... day of.....A. D., 192...

STATE OF MICHIGAN } ss. (Signatures of Organizers) .....
County of..... } .....
.....

On this.....day of....., A. D., 19...., before me a.....in and for said county, personally appeared.....known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
Notary Public.

My commission expires....., 19....

(See §397 et seq.)

§691. Increase of Capital Stock.

(Official Form Prepared by Secretary of State)

CERTIFICATE OF INCREASE OF CAPITAL STOCK
OF
.....
(P. O. Address).....

We, the undersigned, being the president and secretary of

....., a corporation existing under the provisions of Act No. 84, Public Acts of 1921, do hereby certify, in accordance with the requirements of Section 10, Chap. 2, Part II, of the said act:

That at the*.....meeting of the stockholders of the said corporation,*.....held on the..... day of.....A. D., 192...., at..... it was resolved by a vote of at least two-thirds of the capital stock of the said corporation that the authorized capital stock be increased from.....dollars to..... dollars.

We therefore certify that in accordance with the terms of the resolution, adopted as aforesaid by virtue of the authority granted by said Act No. 84, P. A. 1921, the authorized capital stock of this corporation is fixed at the sum of.....dollars, divided into.....shares of the par value of.....dollars each.

We further certify that of the total authorized capital stock, after such increase,.....dollars has been subscribed, and.....dollars has been actually paid in. Of the total amount paid in.....,dollars has been paid in on the increase, of which.....dollars has been paid in cash, and.....dollars has been paid in other property, an itemized description of which, with the valuation at which each item is taken, is as follows, viz:

.....

.....

IN WITNESS WHEREOF, we hereunto sign our names this.....day of.....A. D., 192...

.....

President.

.....

Secretary.

*NOTE—Either insert the word "annual' before the word "meeting" or add the words "called expressly for the purpose of increasing its authorized capital stock" after the word "corporation."

AFFIDAVIT OF STOCKHOLDERS AS TO PROPERTY VALUE EXCHANGED FOR STOCK

STATE OF MICHIGAN }
} ss.
County of..... }

....., ...and.....being duly sworn do depose and say that they are three of the stockholders of the....., whose authorized capital stock has been increased in accordance with the attached certificate; that they know the property described in such certificate and taken in payment for capital stock, and that the same has been actually transferred to such corporation and further say that said property is of the actual value of.....dollars.

And further say not.

.....

.....

.....

Subscribed and sworn to before me this.....day of.....A. D., 19....

.....

Notary Public.

My commission expires....., 19....

(See §310)

§692. Increase of Capital Stock—Preferred and Non-Par.

(Official Form Prepared by Secretary of State)

CERTIFICATE OF INCREASE OF CAPITAL STOCK

AND

Providing for Preferred Stock and Stock of Non-Par Value of the.....Company.

(P. O. Address).....

We, the undersigned, being the president and the secretary of the....., a corporation existing under the provisions of Act No. 84 of the Public Acts of 1921, do hereby certify, as required by section 10, Subdivision 3, Chapter 2, Part II, of said act:

That at a meeting of the stockholders of said corporation expressly called for the purpose of increasing its capital stock and providing for preferred stock and stock of non-par value, and held at the office of said company on the .....day of.....A. D., 192..., it was resolved, by a vote of two-thirds of the capital stock of said corporation, that the capital stock be increased from .....dollars to.....dollars, and that the articles of association be so amended as to provide for preferred stock and stock of non-par value, and that the articles relating to capital stock be and the same are amended so as to read as follows, viz.:

The capital stock of the corporation hereby organized is the sum of.....dollars, of which.....dollars shall be common stock,.....dollars shall be preferred stock and.....shares of non-par value stock. The preferred stock shall be subject to redemption at par on the .....day of.....A. D., 19....., and

the holder shall be entitled to a dividend of .....per cent per annum, payable....., which shall be cumulative and payable before any dividend shall be set apart or paid on the common stock. The preferred shareholders shall.....be entitled to vote for directors.

The non-par stock shall be classified on the following basis: .....

The classification of such shares and the number of shares in each: .....

The holders of non-par value stock shall.....be entitled to vote for directors.

The order of priority of participation of the non-par stock in dividends or assets is.....

The number of shares into which the capital stock is divided is.....of the par value of..... dollars each.

We do further certify that the total amount of common stock, including such increase, subscribed is..... dollars. The total amount of preferred stock subscribed is.....dollars.

The total amount of common stock, actually paid in, is the sum of.....dollars, of which..... dollars of the increase has been paid in cash, and..... dollars has been paid in other property, an itemized description of which, with the value at which each item is taken, is as follows, viz.: .....

The amount of preferred stock actually paid in is the sum of.....dollars, of which..... dollars of the increase has been paid in cash, and..... dollars has been paid in other property, an itemized description of which, with the value at which each item is taken, is as follows, viz.: .....

It was further resolved by the same vote that the value of, and the price at which such increase of the capital shall

be subscribed and paid for by the stockholders be fixed at .....and the time and manner of subscription and payment for such increased stock shall be as follows: ..... and the directors of said corporation are authorized to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof, and the directors may make provision for calling in and cancelling the old and issuing new certificates of stock.....

In witness whereof we have hereunto signed our names this.....day of....., A. D., 192...

.....President.

.....Secretary.

(See §§310, 264, 290.)

AFFIDAVIT OF STOCKHOLDERS AS TO PROPERTY VALUE EXCHANGED FOR STOCK

STATE OF MICHIGAN } ss.
County of.....

....., ...and.....being duly sworn do depose and say that they are three of the stockholders of the.....amendments to whose articles of association are hereto attached; that they know the property described in such amendments and taken in payment for capital stock, and that the same has been actually transferred to such corporation, and further say that said property is of the actual value of..... dollars.

And further say not.

.....

.....

.....

Subscribed and sworn to before me this.....day of....., 192...

.....

Notary Public.

My commission expires....., 192...

§693. Decrease of Capital Stock.

(Official Form Prepared by Secretary of State)

MICHIGAN

CERTIFICATE OF DECREASE OF CAPITAL STOCK

of the.....Company.

(Postoffice address).....

We, the undersigned, being the president and the secretary of the directors of the....., a corporation existing under the provisions of Act No. 84 of the Public Acts of 1921, do hereby certify, as required by Section 10, Chapter 2, Part II, of said act:

That at a meeting of the stockholders of said corporation expressly called for the purpose of decreasing its capital stock,.....and held at the office of said company on the.....day of.....A. D., 19...., it was resolved, by a vote of two-thirds of the capital stock of said corporation, that the capital stock be decreased from.....dollars to.....dollars, and that the articles of association relating to capital stock be and the same are amended so as to read as follows, viz.:

The capital stock of the corporation hereby organized is the sum of.....dollars.

The number of shares into which the capital stock is divided is..... of the par value of.....dollars each

We do further certify that the total amount of stock, after such decrease, subscribed is.....dollars.

The total amount of stock, after such decrease, actually paid in, is the sum of.....dollars.

In witness whereof, we hereunto sign our names this .....day of.....A. D., 19...

.....
President.

.....
Secretary

(See §310.)

§694. Amendment Reducing Term of Corporate Existence.

MICHIGAN

CERTIFICATE OF AMENDMENT TO THE ARTICLES OF ASSOCIATION
OF

.....Company.
(Postoffice address).....

We, the undersigned, being the president and the secretary of the....., a corporation existing under the provisions of Act No. 84 of the Public Acts of 1921, do hereby certify, as required by section 9, Chap. 1, Part II of said act:

That at a meeting of the stockholders of said corporation expressly called for the purpose of amending its articles of association.....and held at the office of said company on the.....day of....., A. D., 19...., it was resolved, by a majority vote of the capital stock of said corporation, that Article No..... of the articles of association be and the same is amended so as to read as follows, viz.:

ARTICLE VI

The term of existence of this corporation is fixed at..... years from and after the.....day of....., 19....

In witness whereof, we hereunto sign our names this .....day of....., A. D., 19....

.....
President.

.....
Secretary.

(See §§230 and 244.)

NOTE: This form with appropriate changes may be used for any minor amendment.

§695. Notice of Dissolution.

(Official Form Prepared by Secretary of State)

MICHIGAN

NOTICE OF DISSOLUTION

(Name of Corporation).....
(Postoffice address).....
(Date).....19....

We, the undersigned, being a majority of the remaining members of the last board of directors of....., a corporation doing business under the provisions of Act No. 84, Public Acts of 1921, hereby give notice in accordance with the requirements of Section 7, Chapter 4, Part I, of said Act, that the said corporation has been dissolved by (1).....

.....
.....
.....
} Majority of Directors

1. Here insert one of the following statements:
Expiration of its term on....., 19....
Process of law. *(Set forth title of legal proceedings with place and date of determination.)*
Sale of its property and franchises.
Mortgage Sale of its property and franchise.

NOTE: This Notice must be filed in triplicate. A filing fee of $5.00 must accompany the notice.

(For circumstances requiring use of this form, see §167.)

§696. Articles Continuing Corporate Existence.

(Official Form Prepared by Secretary of State)

STATE OF MICHIGAN

ARTICLES OF ASSOCIATION

Continuing the Corporate Existence
of

.....

We, the undersigned, the president and secretary of the .....Company, for the purpose of continuing the corporate existence of said company under the provisions of Section 1, Chapter 4, Part I of Act No. 84 of 1921, and in pursuance of a resolution adopted by a vote of two-thirds of the capital stock of said company at a special meeting called for that purpose, held on the.....day of....., A. D., 19...., copy of which resolution is hereto attached, do hereby make, sign and acknowledge articles of association, to-wit:

ARTICLE I

The name assumed by this association, and by which it shall be known in law, is.....

ARTICLE II

The purpose or purposes of this corporation are as follows: .....

ARTICLE III

The principal place at which operations are to be conducted is at.....in the county of..... State of.....

ARTICLE IV

The capital stock of the corporation hereby organized is the sum of.....dollars.

ARTICLE V

The number of shares into which the capital stock is divided is.....of the par value of.....dollars each.

ARTICLE VI

The amount of capital stock subscribed is the sum of .....dollars.

ARTICLE VII

The amount of said stock actually paid in at the date hereof is the sum of.....dollars.

ARTICLE VIII

The office in the State of Michigan for the transaction of business shall be kept at.....

ARTICLE IX

The term of existence of this corporation is fixed at..... years from the.....

ARTICLE X

The names of the stockholders, their respective residences and the number of shares of stock subscribed for by each are as follows:

NAMES	RESIDENCE	NO. OF SHARES
.....	.....	.....

IN WITNESS WHEREOF, We, the president and the secretary of said corporation, for the purpose of giving legal effect to these articles, hereunto sign our names, this..... day of..... A. D., 19....

NAMES

.....President.
.....Secretary.

STATE OF MICHIGAN }
} ss.
County of.....}

On this.....day of....., 19...., before me, a.....in and for said county, personally appeared.....known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

.....
Notary Public.

My commission expires....., 19....

(Attach the following certificate)

CERTIFIED COPY OF PROCEEDINGS

Required by §152 to Be Appended to Form §696

STATE OF MICHIGAN }
} ss.
County of.....}

I, ..., Secretary of the.....
Do HEREBY CERTIFY, that at a.....meeting of the stockholders of said company, called for the purpose of continuing the corporate existence of said company, and held at....., on the.....day of....., A. D., 19...., the following resolution was adopted by a vote of two-thirds of its capital stock, viz.:

WHEREAS, The corporate existence of the..... is about to terminate by limitation of law, to-wit: On the .....day of....., 19....

THEREFORE RESOLVED, That the corporate term of such company be extended for the further term of.....years and the president and secretary are hereby directed to make, sign and acknowledge articles of association as provided in section 1, chapter 4, part I, of Act. No. 84 of the Public Acts of 1921.

.....
Secretary.

Subscribed and sworn to before me this.....day of....., 19....

.....
Notary Public.

My commission expires....., 19....

(See §152)

§697. Mutual Stock Subscription—(Preorganization).

The subscribers hereto hereby mutually agree, each with all others, to take the number of shares of stock of.....

Company, a corporation proposed to be organized under Act 84 of the Public Acts of 1921 of the State of Michigan, herein set opposite our respective names, and we hereby, each severally and for himself, agree to pay for the same to the treasurer of said company, when organized, on demand, the par value of.....dollars per share therefor, at such time, and in such amounts, as the board of directors of said corporation, when organized, shall require.

Dated, the.....day of....., 19.....

.....

.....

.....

§698. Individual Subscription.

I hereby subscribe and agree to pay for at the par value of.....dollars per share,.....shares of the common capital stock of.....Company, on demand and at such time or times, and in such amounts, as the board of directors of said company may require.

Dated, the.....day of....., 19....

.....

§699. Option for Purchase of Stock.

THIS AGREEMENT, Made this.....day of....., 19...., between.....of....., as party of the first part, and.....of....., as party of the second part, WITNESSETH:

(1) That in consideration of.....dollars, the receipt whereof is hereby acknowledged, said party of the first part hereby grants to said party of the second part the right to purchase from said party of the first part, at the option of said party of the second part,.....shares of the capital stock of.....Company, at a price of.....dollars per share, at any time prior

to twelve o'clock noon on the.....day of....., 19....

(2) That in case of exercise of this option, the money paid herefor shall be applied upon the purchase price of said stock.

(3) That all dividends of every kind, declared at any time while this option shall remain in force, shall belong to said party of the second part, and shall be delivered to him together with said stock, when and in case this option shall be exercised by said party of the second part.

In Presence of
.....
.....

§700. Proxy.

KNOW ALL MEN BY THESE PRESENTS, That I, A. B.. do hereby appoint and constitute C. D. my lawful agent and attorney to vote as my proxy for the election of directors, and upon all matters that may be considered at the meeting of the stockholders, of the.....Company, called to be held at the office of said company in the city of....., Michigan, on the.....day of....., 19...., at....o'clock...M., and at any and all adjourned sessions of said meeting thereafter held pursuant to adjournment, according to the number of votes which I would be entitled to then vote if personally present at such meeting; hereby revoking all former proxies by me made.

Dated, this.....day of....., 19....

In Presence of
.....
.....

(See §233)

§701. Continuing Proxy.

I hereby appoint and constitute A. B. my lawful agent and attorney with full authority to vote in my name, place and stead upon all shares of stock which I shall then be entitled to vote at any and all meetings of the stockholders, whether general or special, of.....Company. This proxy shall remain in full force until revoked in writing, filed with the secretary of said company.

Dated, the.....day of....., 19....

In Presence of }
..... } .....

§702. Proxy of Corporation.

.....Company, holding.....shares of stock in.....Company, hereby appoints and constitutes A. B. its true and lawful attorney to represent said first named company, and to vote upon all shares on which it shall then be entitled to vote, at the certain meeting of stockholders of said.....Company, called to be held at the office thereof at No. ....Street, in the city of....., Michigan, on the.....day of....., 19...., at.....o'clock,...M., and then and there to represent this corporation as fully as said agent and attorney might under a like proxy represent an individual.

IN WITNESS WHEREOF, this proxy has been executed pursuant to the resolution of the board of directors of said first mentioned company, this.....day of....., 19....

.....Company,
By.....President,
.....Secretary.

§703. Revocation of Proxy.

To.....Company:

Please take notice that I have revoked, and do hereby revoke, all proxies by me made, in whatsoever form and in whatsoever name given, authorizing any person, firm or corporation to represent me and vote my shares at any meeting or meetings of.....Company.

Dated, the.....day of....., 19....

.....

(See §234)

§704. Resolution Calling in Subscriptions.

BE IT RESOLVED, that a call is hereby made by the board of directors of.....Company for payment to be made to the treasurer of said company, on or before the.....day of....., 19...., of..... per cent of all subscriptions to the capital stock of said corporation.

BE IT FURTHER RESOLVED, that the secretary of this company is hereby instructed to send a copy of this resolution by registered mail to each subscriber to said capital stock at least.....days before the date last mentioned in said call.

(See §314)

§705. Resolution Declaring Dividend.

WHEREAS, it appears by the books of this corporation that there is now on hand in the treasury of this company a surplus in the amount of.....dollars, subject to distribution as dividends:

THEREFORE, BE IT RESOLVED, that a dividend of..... per cent on the common stock of this company is hereby

declared payable out of said surplus to the stockholders according to their respective holdings, and that the same be paid on or before the.....day of....., 19....

§706. Declaration of Dividend on Preferred Stock.

RESOLVED, that a semi-annual dividend of..... per cent upon outstanding preferred stock of this company be and is hereby declared and made payable, from the surplus profits of this company, to the holders of such preferred stock, as the same appear of record on this..... day of....., 19...., and that said dividend be paid on the.....day of....., 19....

§707. Resolution Authorizing Bond Issue.

WHEREAS, this corporation requires a sum of approximately $50,000 for the purpose of enlarging its machine shops and increasing its equipment to meet the present requirements of its business:

THEREFORE, BE IT RESOLVED, that for the purpose of raising said fund, this company shall issue its first mortgage, ten year, coupon bonds in the amount of $50,000, bearing date the.....day of....., 19...., due on the.....day of....., 19...., and bearing interest at the rate of 7% per annum, payable semi-annually; said bonds to be in denominations of $500 each, numbered consecutively from one to one hundred, both numbers inclusive, payable to bearer, and to be signed by the president and secretary of this corporation under the seal thereof, and to be certified by....., trustee, and each bond to bear coupons evidencing the interest to fall due from time to time and to be authenticated by the fac simile signature of the treasurer of this corporation; and

BE IT FURTHER RESOLVED, that the president and

secretary of this corporation are hereby authorized and directed in the name and behalf of this corporation and under its corporate seal, to make, execute and deliver a trust mortgage to said trustee of all the property and assets of this corporation, both real, personal and mixed, wherever situate, including property hereafter acquired, to secure payment of the principal and interest of said bonds when and as the same shall mature; and

BE IT FURTHER RESOLVED, that the form of said trust mortgage, and of said bonds and coupons, may be such as shall be approved by said president and secretary of this company, and that execution of the same by them in the name of this corporation shall be conclusive evidence of such approval.

(See §316)

§708. Notice of Annual Meeting of Stockholders.

Notice is hereby given that the annual meeting of the stockholders of.....Company will be held at the office of said company at No.....Street, in the city of....., Michigan, on the.....day of ....., 19...., at.....o'clock, ...M., for the election of directors for the ensuing term, and for the transaction of such other business as may properly come before the annual meeting of stockholders.

.....
Secretary.

§709. Notice of Special Meeting of Stockholders.

To the Stockholders of A. B. Company:

Please take notice that, pursuant to a resolution of the board of directors of this company, a special meeting of

the stockholders of A. B. Company is hereby called to convene at the office of said company at No..... ..... Street, in the city of....., County of....., State of Michigan, on the.....day of....., 19...., at the hour of.....o'clock P. M., for the purpose of taking action upon the proposal of C. D. Company to purchase the entire assets, franchises, established trade, trade name and good will of said A. B. Company, at a price of one million dollars, payable in cash at time of transfer.

.....

Secretary.

Attest:

.....

President.

§710. Notice of Meeting of Board of Directors.

Notice is hereby given that a meeting of the board of directors of.....Company will be held at the office of said company at No..... .....Street, in the city of....., State of Michigan, on the.....day of....., 19...., at..... o'clock, ...M.

Dated, ..., 19...

.....

Secretary.

§711. Notice of Special Meeting of Board of Directors.

Notice is hereby given that, pursuant to the call of the president, there will be a special meeting of the board of directors of.....Company held at the office of said company at No..... .....Street, in the city of....., Michigan, on the..... day of....., 19...., at.....o'clock ....M.,

for the purpose of taking action upon the purchase of a factory site.

Dated, ..., 19.....

.....

Secretary.

§712. Waiver of Notice of First Meeting of Stockholders.

The subscribers hereto, being the incorporators and all the stockholders of.....Company, a corporation organized under and by virtue of the laws of the State of Michigan, do hereby severally waive notice of the time, place and purpose of the first meeting of the stockholders of said corporation and do hereby consent that the same be held at the office of A. B. in the city of....., County of....., State of Michigan, on the .....day of....., 19...., at..... o'clock, ...M.; and we do further hereby consent to the transaction of any and all business that may come before said meeting including the election of directors and the adoption of by-laws.

Dated, this.....day of....., 19....

.....

(Signed by all stockholders)

(See §123)

§713. Notice of Approaching Dissolution.

To the stockholders and creditors
of.....Company, a Michigan corporation:

Notice is hereby given that said corporation is about to be dissolved pursuant to the provisions of Act No. 84 of the Public Acts of Michigan of the year 1921, permitting voluntary dissolution of solvent companies. All creditors

of said company are hereby requested to present their claims at the office of said corporation, No....., ... Street in the city of....., Michigan, on or before the.....day of....., 19....

Dated: ....., 19....

.....Company.

By .....President,

.....Secretary.

(See §177)

§714. Record of Special Meeting of Stockholders Called to Take Action Upon Sale of Total Assets.

A special meeting of the stockholders of A. B. Company was held at the office of said company in the city of..... ....., State of Michigan, on the.....day of ....., 19...., pursuant to notice thereof, previously served by registered mail upon each stockholder of said company, and pursuant to the statute in such case made and provided, which notice, so served, was in the following form:

To the Stockholders of A. B. Company:

Please take notice that, pursuant to a resolution of the board of directors of this company, a special meeting of the stockholders of A. B. Company is hereby called to convene at the office of said company at No..... ....Street, in the city of.....County of....., State of Michigan, on the..... day of....., 19...., at the hour of..... o'clock P. M., for the purpose of taking action upon the proposal of C. D. Company to purchase the entire assets, franchises, established trade, trade name and good will of said A. B. Company, at a price of one million dollars, payable in cash at time of transfer.

.....
Secretary.

Attest:

.....
President.

In proof of due service of the foregoing notice, the affidavit of the secretary of said A. B. Company is hereby spread upon this record and made a part of the minutes of this meeting in manner and form as follows:

STATE OF MICHIGAN }
} ss.
County of..... }

....., being duly sworn, deposes and says that he is the secretary of A. B. Company and that as such secretary on the.....day of....., 19...., he sent to each of the stockholders of said company, respectively, by registered mail, with postage and registry fees fully prepaid, addressed to the last address of such stockholder appearing upon the books of said corporation, or known to said secretary, a notice of a certain special stockholders' meeting called to be held at the office of said A. B. Company in the city of....., in said county, on the.....day of.....19...., of which notice so sent the foregoing copy entered upon this record is a true copy; that said notice was in all respects served in accordance with the provisions of the charter and by-laws of said A. B. Company.

.....

Subscribed and sworn to before me this.....day of ....., 19....

.....
Notary Public.

My commission expires....., 19....

Pursuant to the foregoing notice said special meeting of stockholders was convened at the hour and place in said notice mentioned.

....., President of said company, presided.

The secretary read to the assembled stockholders the call of the meeting.

A roll call was thereupon had which disclosed that more than three-fourths of the outstanding capital stock of said corporation was present in person or by proxies duly filed with the secretary.

The following resolution was introduced by Mr..... ....., a stockholder, seconded by Mr....., a stockholder:

WHEREAS, A. B. Company is a corporation organized and existing under the provisions of Act No. 84 of the Public Acts of Michigan of the year 1921, for..... purposes; and

WHEREAS, C. D. Company is a corporation organized and existing under the same act for purposes of the same character; and

WHEREAS, more than three-fourths in interest of the capital stock of said A. B. Company desire to sell and convey all the property of said A. B. Company to said C. D. Company at a selling price of one million dollars cash, which said C. D. Company now offers to pay therefor:

NOW, THEREFORE, BE AND IT IS HEREBY RESOLVED, that more than three-fourths of the capital stock of said A. B. Company, duly assembled at a special meeting of the stockholders of said company, lawfully called, hereby consents to sell, and hereby accepts the offer of said C. D. Company to purchase, at the price of one million dollars payable in cash at time of transfer, all of the property, assets, franchises, established trade, trade name and good will of said A. B. Company; and

IT IS FURTHER HEREBY RESOLVED, that upon payment

of said purchase price to the treasurer of this corporation, the president and secretary of this corporation, or such other officers as may be delegated by the board of directors for that purpose, shall be, and they are hereby, authorized to make, execute and deliver lawful assignments, transfers and conveyances to said C. D. Company of all of the assets of this corporation.

Roll call having been demanded upon the foregoing resolution, a vote was taken as follows:

E. F. voted.....shares aye,
G. H. voted.....shares aye,
I. J. voted.....shares aye,
K. L. voted.....shares aye,
M. N. voted.....shares aye.

Nays none.

The president thereupon declared that the foregoing resolution had been adopted by affirmative vote therefor of more than three-fourths of the outstanding stock of said A. B. Company.

Thereupon the meeting adjourned.

.....
Secretary.

Attest:

.....
President.

§715. Consolidation Agreement.

THIS AGREEMENT, made and entered into this..... day of....., 19...., by and between A. B. Company, party of the first part, and C. D. Company, party of the second part, WITNESSETH:

(1) That each of said parties respectively is a corporation organized under the laws of the State of Michigan, for the following purposes: .....

(2) That in consideration of the mutual covenants and agreements herein expressed, said parties hereby agree to consolidate the above named corporations into a single corporation organized under the provisions of Act No. 84 of the Public Acts of Michigan of the year 1921, and all acts amendatory thereof, upon the following terms and conditions, to-wit:

(a) The name of the corporation to be formed by said consolidation shall be E. F. Company.

(b) The board of directors which shall manage the property, business and affairs of said consolidated company shall be nine in number.

(c) The purpose or purposes of said consolidated company shall be the same as those hereinbefore stated as the purposes of said consolidating companies.

(d) The principal place of business and the main business office of said consolidated company shall be at.....

(e) The total authorized capital stock of said consolidated company shall be.....dollars, all of which shall be common stock of the par value of $100 per share.

(f) The total assets of each consolidating companies shall be accepted as full payment for capital stock of said consolidated company to an amount equaling, dollar for dollar, the par value of the shares of all of the stock of said consolidating companies now issued and outstanding, it being hereby expressly warranted and agreed that the total amount of capital stock of said A. B. Company now issued and outstanding is in the amount of.....dollars and no more, and that the total amount of the capital stock of said C. D. Company now issued and outstanding is of the par value of.....dollars and no more.

(g) That each and every stockholder of said consolidating corporation shall promptly surrender up to said consolidated corporation, when formed, all certificates of stock

held by them in said consolidating companies, and shall then immediately receive in exchange therefor like amounts of stock, dollar for dollar, in said new corporation, issued in the name or names of the respective persons entitled thereto.

(3) That the provisional officers and directors of said E. F. Corporation, who shall have the necessary authority to form said corporation and to act as the officers and directors thereof for the first year, and until their successors shall have been duly elected and qualified, shall be as follows: .....

(4) That said provisional officers and directors shall have full authority to make and file articles of association for the formation of said consolidated corporation pursuant hereto, and to agree upon and decide all details not herein expressly provided.

(5) That at the time of execution of the articles of association of said E. F. Corporation, all of the assets of said party of the first part, and of said party of the second part, of every name, nature and description whatsoever, including franchises, subscriptions and good will, shall be assigned, transferred and conveyed to said E. F. Company, in consideration of said stock of said E. F. Company to be thereafter issued as hereinbefore provided, and upon the further consideration that said E. F. Company shall assume and agree to pay and discharge all debts, obligations and liabilities whatsoever of said respective consolidating companies.

IN TESTIMONY WHEREOF, said corporations consolidating pursuant hereto have hereunto set their corporate names and seals by their duly authorized officers the day and year first above written.

In presence of

.....

.....

A. B. Company,
By.....
President.
.....
Secretary.
C. D. Company,
By.....
President.
.....
Secretary.

(See §135, et seq.)

§716. Bond of Treasurer.

KNOW ALL MEN BY THESE PRESENTS, that we, A. B., of the city of....., State of Michigan, as principal, and.....Surety Company, a corporation organized and existing under the laws of the state of....., and duly authorized to carry on business in the State of Michigan, as surety, are held and firmly bound unto.....Company, a corporation organized under the laws of the State of Michigan, its successors and assigns, in a penal sum of..... dollars, to be paid to said obligee corporation, its successors and assigns, for which payment well and truly to be made said principal binds himself, his heirs, executors and administrators, and said surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the above bounden A. B. has been duly elected to the office of treasurer of said..... Company;

NOW THEREFORE, the condition of this obligation is such that if said A. B. shall well and truly in all things perform his duties as such treasurer, so long as he shall hold said office or continue therein during the term for

which he has been, or hereafter may be elected, appointed or hold over, and shall upon request of the board of directors of said company faithfully account to said corporation, its successors or assigns, for all moneys, goods, property, books, records and vouchers, of every nature whatsoever, for which said A. B. may in anywise be accountable to said corporation, and if at the expiration of his term or continuance in office, and also in case of his death, resignation, retirement or removal from office, all books, papers, vouchers, money and other property of whatever kind or nature in his possession, or under his control, or with which he is chargeable, belonging to said.....Company, shall be fully restored to it, then the above obligation to be void; otherwise to remain in full force.

Sealed with our seals and dated this.....day of ....., 19....

In Presence of

.....

.....

.....(L. S.)

.....(L. S.)

(See §203)

§717. Brief Statement of Broad Purposes.

To undertake, engage in, transact or carry on any and all kinds of lawful manufacturing, mechanical, mercantile, trading, contracting, commercial, building, agricultural, logging, quarrying and real estate business, and any and all other kinds of business incidental, ancillary, relating, pertaining, necessary or proper to, or connected with, any one or all, of the purposes and kinds of business hereinbefore mentioned.

(See §§7, 28, 73, 74, 75)

§718. Statement of Preference for Insertion in Preferred Stock Certificate.

The stock evidenced by this certificate is part of an issue of authorized preferred stock amounting to..... dollars. The owners of this preferred stock are entitled to receive, and the company is bound to pay, out of its surplus or net earnings, a dividend at the rate of 7% per annum, which shall be cumulative and shall be payable annually before any dividend shall be set apart or paid on the common stock. The preferred stock evidenced by this certificate may be redeemed and retired at any time on or before the .....day of....., 19...., upon payment to the holder hereof of.....dollars per share and all accrued dividends. In case of liquidation or dissolution of said company, the owners of this preferred stock shall be paid the par value of their shares and all accrued dividends unpaid thereon before any amount shall be distributed among the owners of the common stock, and after the payment of the par value of the common stock to the owners thereof, the balance of the assets shall be distributed ratably among the stockholders without preference.

For another form see post §730. For sections of Act relating to preferred stock, see §264 et seq.

§719. Acknowledgment by Corporation—(Statutory).

3 C. L. 1915, (11755).

STATE OF MICHIGAN }
} ss.
County of..... }

On this.....day of....., 19...., before me appeared A. B., to me personally known, who, being by me duly sworn did say that he is the.....of..... Company, and that the seal affixed to said instrument is the

corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and said A. B. acknowledged said instrument to be the free act and deed of said corporation.

.....
Notary Public.
My commission expires....., 19....

In instances where the corporation has no corporate seal, omit from the above form the words, "the seal affixed to said instrument is the corporate seal of said corporation," and insert instead the words, "and that said corporation has no corporate seal."

§720. Form of Acknowledgment by More Than One Officer.

STATE OF MICHIGAN }
} ss.
County of..... }

On this.....day of....., 19...., before me a Notary Public in and for said county, personally appeared A. B., C. D. and E. F. to me known, who being by me severally duly sworn did depose and say, each for himself, that they are respectively and in the order last above named, the president, the secretary and the treasurer of .....Company, a corporation organized and existing under the laws of the State of Michigan, and that the foregoing instrument by them severally subscribed was by them signed and sealed in behalf of said corporation by authority of the board of directors thereof, and that the seal affixed to said instrument is the seal of said corporation, and that said instrument was executed for the intents and purposes therein expressed, and that execution of said

instrument is by them, and by each of them, acknowledged to be the free act and deed of said corporation.

.....

Notary Public.

My commission expires....., 19....

§721. By-Laws of Corporation for Profit.

BY-LAWS

OF

.....Company.

1. *Annual Meetings of Stockholders.* The annual meeting of the stockholders of this corporation shall be held at the principal office thereof in the city of....., State of....., on the third Monday in January in each year hereafter at the hour of.....o'clock ....M., at which time and place the stockholders shall elect by ballot a board of.....directors to serve for one year and until their successors shall have been elected. (See §257.)

NOTE:—If the principal office is outside the state of Michigan, add: The office of this corporation at the city of ....., in the state of....., is hereby established, and shall be maintained, as a principal business office without the state of Michigan, at which meetings of stockholders, and of directors, of this corporation may be held. (See §117.)

2. *Special Meetings of Stockholders.* Special meetings of the stockholders may be called by the board of directors at any time. At least three days' notice of such meeting shall be given to each stockholder by the secretary in the manner hereinafter provided. The notice of a special meeting of stockholders shall specify the date, hour and place of meeting, together with a statement of the purpose or purposes thereof, and shall show that such notice is issued pursuant to collective action by the board of directors. All such notices shall be signed by the secretary. (See §257,

et seq.; also Westcott v. Minnesota Mining Co., 23 Mich. 144 (1871); Dusenbury v. Looker, 110 Mich. 58 (1896).

3. *Notice and Service Thereof.* Except as otherwise provided by statute, all notices required to be given by this corporation, or by its board of directors, or by any officer, shall be in writing, signed by the secretary of this corporation, or by some other officer expressly designated by the board of directors for that purpose, and shall be deemed duly served when deposited in the United States mail, with postage fully prepaid, plainly addressed to the person upon whom service is to be made at the last address of such person appearing upon the books of this corporation, or known to said secretary.

4. *Meetings of Board of Directors.* The board of directors shall convene, without notice, at the time and place of, and immediately after, each and every meeting of the stockholders held for the purpose of electing directors, at which time and place the directors shall elect, in such manner as they may determine, a president, a vice-president, a secretary and treasurer, who shall hold their offices for one year and until their respective successors shall have been elected and qualified. *Regular meetings* of the board of directors shall be held at such stated times as said board may, from time to time, by resolution provide, but not less frequently than once in each calendar month in each year. *Special meetings* of the board of directors may be held by giving one day's notice thereof to each director, but no notice shall be necessary as a prerequisite of any meeting of the board at which all directors are present. (See §219.)

5. *Qualifications of Officers.* All officers and directors of this corporation shall be and remain at all times stockholders thereof, and in case any officer or director shall sell or transfer all of his holdings, such officer or director

shall thereby, ipso facto, vacate all of the offices in this corporation by him then held. (See §203.)

6. *President.* The president shall preside over all meetings of the directors and of the stockholders; he shall sign all corporate records and all corporate instruments whereunto his signature shall be lawfully required, and shall have and exercise all powers usually incident to the office of president of a corporation, and shall perform such duties as may be delegated to him by the board of directors.

7. *Vice-President.* The vice-president shall perform all duties of the president in case of the absence or disqualification of the president.

8. *Secretary.* The secretary shall be charged with the duty of attending all meetings of the stockholders, and of the board of directors, of this corporation, and shall preserve in record books of the company full and correct minutes of the proceedings of all such meetings. He shall be the custodian of the corporate minute books and seal. It shall be his duty to sign all corporate records and documents whereunto his signature shall be lawfully required, and to give all notices required by the charter, by-laws or resolutions of this company, or by the board of directors.

9. *Treasurer.* The treasurer shall keep, or cause to be kept, in books belonging to this corporation complete and accurate accounts of all receipts and disbursements, resources and liabilities of the company, and shall deposit all moneys and other valuable effects of this corporation in the name of, and to the credit of, this company, in such depositary as may be designated by the board of directors. He shall disburse the funds of the company in payment of the obligations thereof, taking proper vouchers and receipts for such disbursements. He shall render to the president and directors at the stated meetings of the board, or whenever they may require it, correct statements showing the

financial condition of the company. He shall, when required by the board of directors, file with the corporation a bond in such form and amount, and with such surety or sureties, as may be approved by the board, conditioned for the faithful performance of his duties as treasurer. He shall sign all corporate instruments whereunto his signature shall be lawfully required. (See §203.)

10. *Union of Offices.* Any two offices in this corporation, except the office of president and vice-president, may be held by one and the same stockholder. (See §219.)

11. *Other Officers.* The board of directors shall have power to appoint an assistant secretary, an assistant treasurer, an auditor, general counsel, and such other officers or agents as said board may from time to time deem necessary, and to fix the term and compensation of the officers and agents so appointed, but no such term shall extend beyond the term of office of said board. (See §219.)

12. *Vacancies.* The board of directors shall have power to fill any vacancies arising upon said board, or in any office of this corporation, until the next ensuing annual election, by appointing any stockholder to occupy the position vacated. (See §236.)

13. *Notice of Intent to Foreclose Lien on Stock.* Whenever a debt is due to this corporation from a stockholder thereof, the secretary, upon being instructed so to do by the board of directors, shall give written notice to such stockholder that, unless said stockholder shall pay his indebtedness to said corporation within thirty days from the time of giving such notice, then said corporation will proceed to sell and transfer the stock of such stockholder in said corporation in the same manner, and by the same procedure as is provided by law for the sale of the stock of a subscriber to capital stock who has not paid up his subscription. Such notice shall be served in the manner herein-

before provided for service of notices. (See §§339, 342, 344, 345. See also §314.)

14. *Calls.* Notice of calls for payment of subscriptions to the capital stock of this corporation shall be in writing, and may be served in the same manner hereinbefore porvided for service of notices. (See §314.)

15. *Votes and Proxies.* Each share of stock outstanding shall entitle the lawful holder thereof to one vote upon all subjects properly coming before any meeting of the stockholders. Such vote may be cast by the holder of such stock in person or by proxy. Proxies, to be operative, shall be in writing, signed by the principal and filed with the secretary. (See §228.)

16. *Certificates of Stock—Issue and Transfer.* Certificates of stock of this corporation, except as otherwise required by law, shall be in such form as may be adopted by the board of directors, and at the time of issue shall be signed by the president and secretary, and attested by the corporate seal. Such certificates shall be issued in numerical order from a stock certificate book, and shall bear consecutive numbers. Such books shall contain stubs, correspondingly numbered, upon which the full details of each certificate issued shall be entered, together with the receipt of stockholder. All surrendered certificates shall be cancelled by the secretary by writing across their face the word "Cancelled," together with his initials and the date of cancellation, and each cancelled certificate shall be replaced in the stock book, securely pasted to the stub from which it was originally taken, in such manner as to leave all material parts of such certificate and stub conveniently available for examination.

17. *Transfers of Stock.* Transfers of stock may only be made upon the books of the company, and no transfer shall be entered, except upon surrender of the certificate repre-

senting the transferred stock, properly endorsed. No transfers of stock shall be made within ten days next preceding an annual election. See Act 106 of 1913; 3 C. L. 1915, (11920).

18. *Lost Certificates.* Any person claiming to have lost any certificate of stock of this company, upon making proof of such loss by affidavit, or otherwise, to the satisfaction of the board of directors, and upon indemnifying the corporation in such manner as said board may require, shall be issued, in lieu of such lost certificate, another certificate marked "Duplicate certificate, original lost," and all reissues of such certificate shall be marked in like manner until otherwise ordered by the board of directors.

19. *Checks, Etc.* All notes, checks, drafts and orders for payment of money issued by this corporation shall be signed in the corporate name by the treasurer thereof.

20. *Contracts and Conveyances.* All written contracts and conveyances made by this corporation, except as otherwise provided herein, or by law, shall be executed by the president and secretary, except that ordinary contracts made in the regular course of the company's business shall be valid if signed in the name of this company by the general manager thereof.

21. *Fiscal Year.* The fiscal year of this corporation shall end on the 31st day of December in each year.

22. *Rules of Order.* Roberts' Rules of Order is hereby adopted as the parliamentary authority of this corporation.

23. *Amendments.* The stockholders, by vote of a majority of the shares issued and outstanding, may at any regular meeting, or at any special meeting of the stockholders called for that purpose, repeal, alter or amend these by-laws, or any of them.

CERTIFICATE

I HEREBY CERTIFY, that the foregoing by-laws consisting of paragraphs numbered consecutively from 1 to 23 inclusive, were unanimously adopted at a meeting of the stockholders of said corporation held on the.....day of....., 192...

.....
Secretary.

Attest:

.....
President.

§722. By-Laws of Non-Profit Corporations.

BY-LAWS

OF

.....Society

1. *Qualifications of Members.* No person shall be eligible to membership in this society unless he, or she, shall be a person of good, moral character qualified to vote at all general elections held in this state. (See §397.)

2. *Admittance to Membership.* No person shall be admitted to membership in this society unless he, or she, shall have been elected to membership therein by a three-fourths majority vote of the members present at a regular meeting, or at a special meeting called for the purpose of voting upon candidates for membership. (See §403.)

3. *Number of Members.* The membership of this society is hereby limited to four hundred voting members. The number of members not holding stock, and who therefore have no voting rights, is unlimited. (See §397.)

4. *Stock.* No member who does not hold in his, or her, own name and right at least one share of the stock of this society shall be entitled to any voice or vote in its proceed-

ings. No member shall hold more than ten shares of stock, and all shares shall be non-assignable and non-transferable. (See §400.)

5. *Voting Privileges.* Every member in good standing in this society shall be entitled to cast one vote for each share of stock in this society held and owned by him, or her, upon each and every question properly coming before any meeting of the members. No member not in good standing shall be entitled to vote upon any question. (See §417.)

6. *Good Standing.* All members of this society not under suspension shall be deemed in good standing. (See §403.)

7. *Dues.* Each member of this society shall pay to the treasurer thereof in the month of January in each year, annual dues in the amount of five dollars, for which a receipt shall be issued by the treasurer. (See §415.)

8. *Suspension for Non-Payment of Dues.* Any member who shall neglect or refuse to pay his, or her, dues for a period of thirty days after the last day limited herein for the payment thereof, shall be notified by the secretary, of such non-payment; and if such member shall fail to pay such dues for a further period of thirty days after the date of mailing such notice, he or she may be suspended by resolution of the board of trustees from all further rights and privileges in this society, until such dues shall have been paid. (See §§400, 403, 415.)

9. *Expulsion.* Any member who shall have been convicted of a felony in any court of competent jurisdiction, or who shall be found guilty of gross immorality, or of conduct derogatory to the good name and standing of this society, shall be subject to expulsion. Any member who has been under suspension for non-payment of dues for a period of one year shall be subject to expulsion.

10. *Procedure for Expulsion.* Charges against any

member shall be in writing, filed with the secretary. Such charges shall set forth the alleged offense with reasonable certainty, and shall be signed by the complaining member or members. If the board of directors shall deem such charges sufficient, if true, to justify expulsion of the accused member, the said board shall cause a special meeting of the members to be called for the purpose of hearing proofs and rendering a decision. The accused member shall be served with a copy of the charges and notice of such meeting, and shall be given a fair and reasonable opportunity to be present. He shall have the right to introduce evidence in his defense and to cross-examine witnesses produced against him. No member shall be expelled, except pursuant to a three-fourths majority vote of the members present and entitled to vote at such meeting. (See §§400, 403, 411.)

11. *Shares of Expelled Members.* The shares of any expelled member shall be ipso facto forfeited, and shall revert to this society and shall be subject to resale and reissue at such price as may be fixed thereon by the board of directors; but in case of such resale and reissue the board may, in its discretion, repay, from the proceeds thereof, to such expelled member, a sum not exceeding the amount of his or her original investment in such stock. (See §400.)

12. *Power to Borrow Money.* The board of directors of this society shall have full power, in the name of this society to borrow money as the society's general interests may require, and to issue its note or notes, bond or bonds, as evidence of the obligation or obligations so incurred, and to mortgage its property to secure payment of any such obligation or obligations. (See §424.)

13. *Power to Enact and Amend By-laws.* The board of directors shall have power to enact and to amend by-laws for this corporation, provided that such by-laws shall be

reasonable and not in conflict with the articles of association. (See §407.)

14. *Annual Meetings of Members.* The annual meeting of this society shall be held at such place as may be designated in the notice thereof, in the city of.....Michigan, on the first Monday in.....in each year hereafter at the hour of 7:30 o'clock P. M. at which time the voting members shall elect from among the stockholders by written ballot, a board of.....directors to hold office during the ensuing term and until their successors shall have been elected. Five days' notice of the time and place of holding the annual meeting shall be given to each member.

15. *Special Meetings of Members.* Special meetings of the members of this society may be held upon three days' notice at any time, pursuant to an order of the board of directors.

16. *Quorum of Members.* Members holding a majority of the outstanding stock of this corporation, when duly assembled at any annual or special meeting of this corporation, shall constitute a quorum, (See §228.)

17. *Notice and Service Thereof.* Except as otherwise provided by statute, all notices required to be given by this corporation, or by its board of directors, or by any officer, shall be in writing, signed by the secretary of this corporation, or by some other officer expressly designated by the board for that purpose, and shall be deemed duly served when deposited in the United States mail, with postage fully prepaid, plainly addressed to the person upon whom service is to be made, at the last address of such person appearing upon the books of this corporation, or known to the secretary. Notices of special meeting of members shall state the purpose or purposes of such meeting and shall recite that such notice is issued pursuant to order of the board of directors. (See §217.)

18. *Proxies.* Stock may be voted by the holder thereof in person or by proxy. Proxies, to be operative, must be in writing, signed by the principal and filed with the secretary. (See §240.)

19. *Meetings of Board of Directors.* The board of directors shall convene without notice at the date and place of, and immediately following, each and every meeting of the stockholders held for the purpose of electing directors, at which time and place the directors shall elect, in such manner as they may determine, a president, a vice-president, a secretary and a treasurer, who shall hold their offices for one year and until their respective successors shall have been elected and qualified. *Regular meetings* of the board of directors shall be held at such stated times as the board may, from time to time, by resolution provide, but not less frequently than once in each calendar month of each year. *Special meetings* of the board of directors may be held by giving one day's notice thereof to each director, but no notice shall be necessary as a prerequisite of any meeting of the board at which all directors are present. (See §219.)

20. *Quorum of Directors.* A majority of the directors, duly convened, shall constitute a quorum. (See §228.)

21. *Qualifications of Officers.* All officers and directors of this society shall be and remain at all times stockholders thereof. (See §§200, 407.)

22. *President.* The president shall preside over all meetings of the directors and of the stockholders; he shall sign all corporate records and all corporate instruments whereunto his signature shall be lawfully required, and shall have and exercise all powers usually incident to the office of president of a corporation, and shall perform such duties as may be delegated to him by the board of directors.

23. *Vice-President.* The vice-president shall perform all

duties of the president in case of the absence or disqualification of the president.

24. *Secretary.* The secretary shall be charged with the duty of attending all meetings of the stockholders, and of the board of directors, of this corporation, and shall preserve in record books of the company full and correct minutes of the proceedings of all such meetings. He shall be the custodian of the corporate minute books and seal. It shall be his duty to sign all corporate records and documents whereunto his signature shall be lawfully required, and to give all notices required by the charter, by-laws or resolutions of this company, or by the board of directors.

25. *Treasurer.* The treasurer shall keep, or cause to be kept, in books belonging to this corporation, complete and accurate accounts of all receipts and disbursements, resources and liabilities of the company, and shall deposit all moneys and other valuable effects of this corporation in the name of, and to the credit of, this company, in such depositary as may be designated by the board of directors. He shall disburse the funds of the company in payment of the obligations thereof, taking proper vouchers and receipts for such disbursements. He shall render to the president and directors at the stated meetings of the board, or whenever they may require it, correct statements showing the financial condition of the company. He shall, when required by the board of directors, file with the corporation a bond in such form and amount, and with such surety or sureties, as may be approved by the board, conditioned for the faithful performance of his duties as treasurer. He shall sign all corporate instruments whereunto his signature shall be lawfully required.

26. *Union of Offices.* Any two officers in this corporation, except the office of president and vice-president, may be held by one and the same stockholder. (See §219.)

27. *Other Officers.* The board of directors shall have power to appoint an assistant secretary, an assistant treasurer, an auditor, general counsel, and such other officers or agents as said board may from time to time deem necessary, and to fix the term and compensation of the officers and agents so appointed, but no such term shall extend beyond the term of office of said board. (See §219.)

28. *Vacancies.* The board of directors shall have power to fill any vacancies arising upon said board, or in any office of this corporation, until the next ensuing annual election, by appointing any stockholder to occupy the position vacated. (See §236.)

29. *Notice of Intent to Foreclose Lien on Stock.* Whenever a debt is due to this corporation from a stockholder thereof, the secretary, upon being instructed so to do by the board of directors, shall give written notice to such stockholder that, unless said stockholder shall pay his indebtedness to said corporation within thirty days from the time of giving such notice, then said corporation will proceed to sell and transfer the stock of such stockholder in said corporation in the same manner, and by the same procedure, as is provided by law for the sale of the stock of a subscriber to capital stock who has not paid up his subscription. Such notice shall be served in the manner hereinbefore provided for service of notices. (See §§339, 342, 344, 345. See also §314.)

30. *Calls.* Notice of calls for payment of subscriptions to the capital stock of this corporation shall be in writing, and may be served in the same manner hereinbefore provided for service of notices. (See §314.)

31. *Certificates of Stock—Issue and Record.* Certificates of stock of this corporation, except as otherwise required by law, shall be in such form as may be adopted by the board of directors, and at the time of issue shall be signed

by the president and secretary, and attested by the corporate seal. Such certificates shall be issued in numerical order from a stock certificate book and shall bear consecutive numbers. Such books shall contain stubs, correspondingly numbered, upon which the full details of each certificate issued shall be entered, together with the receipt of stockholder. All surrendered certificates shall be cancelled by the secretary by writing across their face the word "Cancelled," together with his initials and the date of cancellation, and each cancelled certificate shall be replaced in the stock book, securely pasted to the stub from which it was originally taken in such manner as to leave all material parts of such certificate and stub conveniently available for examination.

32. *Lost Certificates.* Any person claiming to have lost any certificate of stock of this company, upon making proof of such loss by affidavit, or otherwise, to the satisfaction of the board of directors, and upon indemnifying the corporation in such manner as said board may require, shall be issued, in lieu of such lost certificate, another certificate marked, "Duplicate certificate, original lost," and all reissues of such certificate shall be marked in like manner, until otherwise ordered by the board of directors.

33. *Membership Certificates.* Certificates of membership in such form as may be adopted by the board of directors shall be issued to members who are not stockholders. Such certificates shall be issued, and the records in relation to the same shall be kept, in the same manner provided herein for the issuing, and keeping records of, certificates of stock. Membership certificates shall not entitle the holder thereof to voice or vote in the affairs of this society.

34. *Checks, Etc.* All notes, checks, drafts and orders for payment of money issued by this corporation shall be signed in the corporate name by the treasurer thereof.

35. *Contracts and Conveyances.* All written contracts and conveyances, except as otherwise provided herein or by law, shall be executed by the president and secretary.

36. *Rules of Order.* Roberts' Rules of Order is hereby adopted as the parliamentary authority of this corporation.

37. *Amendments.* The stockholders, by vote of a majority of the shares issued and outstanding, may at any regular meeting, or at any special meeting of the stockholders called for that purpose, repeal, alter or amend these by-laws, or any of them. The board of directors shall have power to amend these by-laws, or to enact new by-laws, not inconsistent with the articles of association. (See §407.)

CERTIFICATE

I HEREBY CERTIFY, that the foregoing by-laws consisting of paragraphs numbered consecutively from 1 to 37 inclusive, were unanimously adopted at a meeting of the stockholders of said corporation held on the.....day of....., 19....

.....
Secretary.

Attest:

.....
President.

§723. Declaration of Foreign Corporation Seeking Domestication.

(Official Form Prepared by Secretary of State)

Charles J. DeLand,
Secretary of State,
Lansing, Michigan.

....., a foreign corporation organized and existing under and by virtue of the laws of the State of

....., hereby makes the following declaration, pursuant to an act of the Legislature of Michigan, entitled "An act . . . to describe the terms and conditions upon which foreign corporations may be admitted to carry on business within this State . . . , approved, April 26, 1921:

FIRST. The location of its principal office is.....

The location of its principal place or places of business .....

The names and addresses of the principal officers are .....

SECOND. The location of its principal office and the principal place of business in Michigan.....

The names and addresses of the officers or agents of the company in charge of its business in Michigan are .....

THIRD. The total value of the property owned and used by the company in its business, giving the location and general character, and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade-marks, formulas, good will, is..... .....

FOURTH. The value of property owned and used in Michigan and where situated, showing different kinds as in item Third.....

FIFTH. The total amount of business transacted during the preceding year.....

The amount of business, if any, transacted in Michigan .....

SIXTH. The particular purpose or particular kind of business for which the company desires to be admitted is the following.....

SEVENTH. The authorized capital stock of said corporation is.....dollars, not including stock of no-

par value which amounts to.....shares, the market value of each share of which is.....dollars, and the price fixed by corporation for the sale of is..... .....dollars.

EIGHTH. Its corporate term will expire.....

IN WITNESS WHEREOF, Said.....has caused its corporate seal to be affixed and its name to be hereunto attached this.....day of..... A. D., 19....

(L. S.)

.....

By .....

.....

STATE OF MICHIGAN
County of..... } ss.

....., ...being duly sworn, depose and say, that they are officers, towit, the..... and.....respectively of....., that the foregoing statement, executed in the name and on behalf of said corporation, and under its corporate seal, is true.

.....

.....

Sworn to before me and subscribed in my presence, this .....day of.....A. D., 19....

.....

Notary Public.

My commission expires....., 19....

OFFICE OF THE SECRETARY OF STATE

Lansing, Michigan, ..., 19....

From the foregoing statement made by the said....., and from other facts coming to my knowledge, I find the proportion of the capital stock of the company represented by its property.....in Michigan to be.....per

cent of its authorized capital stock, to-wit, the sum of.... .....dollars, on which the franchise fee of one mill on each dollar will be the sum of.....dollars.

.....

Secretary of State.

(See §527.)

§724. Supplemental Statement by Foreign Corporation After Domestication.

(Official Form Prepared by Secretary of State)

.....

....., 19....

To the Secretary of State,
Lansing, Michigan.

....., a foreign corporation, organized and existing under and by virtue of the laws of the State of....., and heretofore duly authorized to transact business in the State of Michigan in accordance with an Act of the Legislature of Michigan, entitled "An act to prescribe the terms and conditions on which foreign corporations may be admitted to do business in Michigan," approved June 6, 1901, as amended, now holding an unrevoked certificate of authority under the said Act, hereby makes the following declaration, supplemental to and amendatory of prior declarations:

Office in Michigan.....

FIRST. The total value of the property owned and used by the company in its business is as follows:

Tangible property	$.....	(Give general character and	
Cash and credits	$.....	location).....	
Franchises - - -	$.....	Trade-marks	$.....
Patents - - - -	$.....	Formulas	$.....
		Good-will	$.....

SECOND. The value of property owned and used in Michigan, giving location and general character, is: .....

THIRD. The total amount of business transacted during the preceding year: $..... The amount of business transacted in Michigan during the preceding year: $.....

FOURTH. Since the last declaration filed by this corporation (Here insert statement of any increase or decrease of authorized capital stock, or other amendment to charter) .....

FIFTH. Authorized capital: .....

IN WITNESS WHEREOF, Said.....has caused its name to be hereunto attached and its corporate seal to be affixed this.....day of..... A. D., 19....

(L. S.)

.....

By .....

STATE OF MICHIGAN }
County of..... } ss.

..... and ....., being duly sworn, depose and say that they are officers, to-wit, the ..... and .....respectively of ....., and that the foregoing statement executed in the name and on behalf of said corporation, and under its corporate seal, is true.

.....

.....

Sworn to before me and subscribed in my presence, this .....day of....., A. D., 19.....

.....

(Seal) Notary Public.

My commission expires....., 19....

OFFICE OF THE SECRETARY OF STATE

Lansing, Michigan, ...

From the foregoing statement, and from other facts coming to my knowledge, I find that the proportion of the authorized.....capital stock of....., represented by its tangible property.....in Michigan, to be.....per cent, to-wit, the sum of.....dollars, on which the franchise fee payable is.....dollars.

Secretary of State.

(See §545)

§725. Form of Appointment of Agent by Foreign Corporation

(Official Form Prepared by Secretary of State)

APPOINTMENT OF AGENT

At a Special Meeting of the Board of Directors of the .....Company duly called, and held at the office of the Company at the City of.....on the..... day of..... A. D., 19...., the following resolution was adopted:

Resolved, That.....of....., Michigan, whose business address is....., be and he is duly appointed the agent of this Company, and authorized to acknowledge service of any and all process for and on behalf of this Company; and this Company does hereby consent that service of process upon said.....shall be taken and held to be as valid as if served upon this Company, according to the laws of the State of Michigan or any other State and this Company hereby waives all claim of error by reason of such service.

.....

Secretary of the.....Company

State of.....
County of..... } ss.

.....President of the.....
Company does hereby certify that the above and foregoing is a true and correct copy of a resolution adopted on this .....day of.....A. D., 19...., appointing .....the agent of said Company to acknowledge service of process.

(L. S.)

IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the seal of said.....Company at the city of.....this..... day of.....A. D., 19....

.....
President.

(§See 527)

§726. Annual Report.

(Official Form Prepared by Secretary of State)

MICHIGAN

ANNUAL REPORT

To be filed by every corporation for profit, whether domestic or foreign.

(Name of Corporation).....
(Post Office Address).....(Street and No.).....
Charles J. DeLand,
Secretary of State,
Lansing, Michigan.

Sir. In accordance with Section Seven of Act No. 85, Public Acts of 1921, the undersigned officers of the.....

.....Company submit the following report of its condition on the 30th day of June, 19.....

1. The place or places at which the corporation's business has been engaged during the year is.....

2. The following are the directors and officers of the corporation.

NAMES OF OFFICERS	POST OFFICE ADDRESS
..... President	.....
.....Vice President	.....
..... Secretary	.....
..... Treasurer	.....

NAMES OF DIRECTORS	POST OFFICE ADDRESS
.....	.....
.....	.....
.....	.....

3. The amount of authorized capital stock:.....
(Common.....
The number of shares of each class (Preferred....
(Non-Par Value..

4. The amount of capital stock subscribed:.....

5. The amount of capital stock paid in, in cash:.....
The amount of capital stock paid in, in property:...

6. The par value of each of the different (Common....
classes of authorized capital stock (Preferred.....
No par value stock (Market value of.....
(Price fixed by corporation for sale of.....
Other classes of stock, if any:.....

7. The nature and kind of the business in which the corporation has been engaged during the year.....

8. The nature, location and value, as near as may be estimated of all property owned by the corporation both in and without Michigan, itemized as follows:

	(A) In Michigan	(B) Without Michigan
(a) Real estate	$.....	$.....
(b) Goods, chattels, merchandise, material and other tangible property	$.....	$.....
(c) Cash on hand (including deposits in banks)	$.....	$.....
(d) Patentrights, copyrights, trademarks and formulas	$.....	$.....
(e) Good-will	$.....	$.....
(f) Value of credits owing to the corporation	$.....	$.....
(g) All other property (specify kinds)	$.....	$.....
TOTALS	$.....	$.....

9. Property exclusively used in interstate commerce. Nature and value of.....$.....
10. Assets of the corporation.....$.....
11. The amount of the liabilities of the corporation itemized as follows:
    (a) Liability on real estate mortgage...$.....
    (b) Liability on chattel mortgage.....$.....
    (c) Liability on all other secured indebtedness .....$.....
    (d) Liability on all unsecured indebtedness .....$.....
    (e) Other liabilities, nature and amount of .....$.....
12. Surplus .....$.....

EXHIBIT "A" ATTACHED HERETO

(Balance Sheet as of June 30, 19....

The foregoing is a true statement of the condition of the corporation as of the 30th day of June, 19.....

WITNESS OUR SIGNATURES:

.....President

.....Secretary

State of.....
County of..... } ss.

We, ... and ....., do solemnly swear that we are the president and secretary, respectively, of the above named corporation, and that the matters set forth in the foregoing report are true and correct to the best of our knowledge and belief.

.....President

.....Secretary

Subscribed and sworn to before me this.....day of ....., 19.....

.....

Notary Public.

My commission expires....., 19....

Tentative computation of the privilege fee as made by the corporation $..... (On account of which certified check, draft, etc., is forwarded with this report.)

Computations as corrected by Secretary of State:

Total Difference
- $..... on capital stock.
- $..... on surplus.
- $.....
- $..... due State.
- $..... due corporation.

(See §§558, 683)

§727. Bill of Complaint by Trustee in Bankruptcy Against Stockholders to Require Payment of Subscriptions.

State of Michigan,
The Circuit Court for the County of....., In Chancery.

To the Circuit Court for the County of....., In Chancery:

A. B., as trustee in bankruptcy of C. D. Company, bankrupt, plaintiff herein, a resident of.....in said county, respectfully shows unto the court:

(1) That, on or about the.....day of....., 19...., E. F., G. H., H. I., and J. K., defendants herein, all being residents of said county, signed and acknowledged before L. M., a Notary Public in and for said county, articles of association whereby said defendants organized said C. D. Company as a corporation under and by virtue of the provisions of Act No....., of the Public Acts of Michigan of the year 19...., and all acts amendatory thereof and supplementary thereto.

(2) That by and in said articles of association it was and is provided that the capital stock of said C. D. Company be fixed at a sum of $500,000 divided into 5,000 shares of the par value of $100 each, and that the purpose or purposes of said corporation should be as follows:.....

.....

(3) That by and in article.....of said articles of association, said defendants, as incorporators of said C. D. Company, recited over their respective signatures that the capital stock of said corporation in the amount of $500,000 had then been fully paid up in cash, which statement was wholly untrue.

(4) That by and in said articles of association said defendants respectively subscribed for the number of shares of stock of said company of the par value of $100 per share written opposite their respective names as follows:

E. F. so subscribed for 1250 shares of said stock of the total par value of $125,000;

G. H. so subscribed for 1250 shares of said stock of the total par value of $125,000;

H. I. so subscribed for 1250 shares of said stock of the total par value of $125,000;

J. K. so subscribed for 1250 shares of said stock of the total par value of $125,000,

making a total amount of 5,000 shares of the aggregate par value of $500,000 subscribed by said defendants as above specified.

(5) That thereafter on or about the.....day of .....19...., said defendants caused said articles of association to be duly filed in the office of the Secretary of the State of Michigan, and in the office of the County Clerk of said county of....., that being the county in which the principal business office of said corporation was and is located, and the said defendants thereupon commenced and continued the business for which said corporation was organized, until the.....day of....., 19...., upon which last mentioned date the said corporation was adjudicated a bankrupt.

(6) That by their said several subscriptions made in said articles of association, as aforesaid, the said defendants, respectively, each became liable to pay, upon call of the board of directors of said C. D. Company, a sum of $100 per share in cash for each and every share of stock of said C. D. Company by said defendants respectively subscribed.

(7) That as this plaintiff is informed and believes, and charges it to be true, that no call was ever made by or in behalf of the board of directors of said C. D. Company, or by or in behalf of said corporation, for payment of all or any part of said subscriptions, and further, that said several subscriptions of said defendants, respectively, remain wholly unpaid and are now in full force, due and demandable for the benefit of the creditors of said C. D. Company.

(8) That on or about the.....day of.....,

19...., said C. D. Company was duly adjudicated bankrupt by the United States District Court for the..... District of....., and that thereafter, on or about the.....day of....., 19...., the plaintiff herein was lawfully appointed as trustee of said bankrupt corporation and duly qualified and entered upon the discharge of his duties under said trust, and is now lawfully engaged in the performance thereof, and that this suit is brought pursuant to an order hitherto made by the referee in bankruptcy of said United States District Court directing plaintiff so to do; all as will more fully appear by reference to said several orders, when produced.

(9) That as such trustee of said C. D. Company, bankrupt, this plaintiff, under direction and authority of said United States District Court, has sold, exhausted, and fully collected the proceeds of, all of the property and assets of every name, nature and description of said C. D. Company, except said unpaid subscription obligations of the defendants herein, and that, after application of the entire net proceeds arising from the sale of said property and assets to the debts of said C. D. Company duly proven and allowed in due course, according to law, in said bankruptcy proceedings, indebtedness of said C. D. Company proved and allowed as aforesaid, in the amount of $100,000 still remains unpaid and owing to the creditors of said bankrupt, upon said claims proved and allowed, for the payment of which unpaid, proved indebtedness plaintiff avers that said defendants, and each of them, are liable upon their several subscriptions to the capital stock of said C. D. Company to the full extent to which said subscriptions now remain unpaid, or for such part thereof as shall be determined to be sufficient to discharge said proved, unpaid indebtedness in full, together with the proper costs and expenses of this proceeding.

Plaintiff therefore respectfully prays:

First. That said E. F., G. H., H. I. and J. K. and said C. D. Company, may be made parties defendant to this bill; and

Second. That said defendants, and each of them, may be required to make true answer to each of the allegations of this bill according to the rules and practice of this court, but not upon oath, the answer upon oath being hereby waived; and

Third. That said defendants, and each of them, may come to an accounting with plaintiff, and that the amount due upon said respective subscriptions of said defendants, and of each of them, to the capital stock of said C. D. Company may be determined and declared; and

Fourth. That this court may determine the amount of the unpaid indebtedness of said C. D. Company, for payment of which said subscriptions of said defendants are assets in the hands of plaintiff; and

Fifth. That said defendants E. F., G. H., H. I. and J. K. may be respectively decreed to pay to plaintiff as trustee in bankruptcy of said C. D. Company, bankrupt, pro rata the amount of their said several unpaid subscriptions to the capital stock thereof, such sums, respectively, as in the aggregate shall be determined to be required, and sufficient, to enable plaintiff to pay in full said unpaid proved indebtedness of said bankrupt, and the costs and expenses of this proceeding, and that such payment shall be ordered to be made within such time as this court may determine, and that plaintiff shall be awarded execution therefor.

Sixth. That plaintiff may have such other and further relief as shall be agreeable to equity and good conscience.

.....

Trustee in Bankruptcy of C. D. Company.

.....

Attorney for Plaintiff.

Business Address:.....

Add Verification.

See note p. 314.

§728. Certificate of Non-Par Stock.

No..... .....Shares

.....Company

Incorporated under the Laws of Michigan.

Capital Stock Authorized, $160,000.

Common Stock, $100,000.

Preferred Stock, $60,000

Common Stock without par value, 10,000 shares.

This certifies that.....is the owner of ..... shares of the non-par value common stock of.....company, transferable in person or by attorney on the books of this corporation on surrender of this certificate, duly endorsed.

The shares represented by this certificate are fully paid and non-assessable, and are a portion of the total 10,000 shares of stock of this corporation without nominal or par value. As to voting rights, and all rights upon distribution of profits, surplus or capital, said non-par shares shall participate, share for share, equally with the common stock.

Witness the seal of this corporation and the signatures of its duly authorized officers, at.....this.....day of....., 19.....

.....

President.

.....

Secretary.

§729. Certificate of Common Stock.

No..... .....Shares.

INCORPORATED UNDER THE LAWS OF MICHIGAN

.....COMPANY

CAPITAL STOCK AUTHORIZED, $30.000.
Common Stock Authorized, $15,000.
Preferred Stock Authorized, $15,000.

THIS CERTIFIES, That.....is the owner of.....SHARES OF THE COMMON STOCK of

.....COMPANY

Full Paid and Non-Assessable, transferable only on the books of this corporation, in person or by attorney, upon surrender of this certificate properly endorsed.

IN WITNESS WHEREOF, said corporation has caused this certificate to be signed by its duly authorized officers and its corporate seal to be hereunto affixed at....., Michigan, this.....day of.....,19.....

.....
President.

.....
Secretary.

SHARES Par $10 Value EACH

(SEAL)

§730. Certificate Preferred Stock.

INCORPORATED UNDER THE LAWS OF MICHIGAN

CAPITAL STOCK AUTHORIZED, $30,000.
Common Stock Authorized, $15,000.
Preferred Stock Authorized, $15,000.

THIS CERTIFIES, That.....is the owner of.....SHARES OF THE PREFERRED STOCK OF

.....COMPANY

Full Paid and Non-Assessable, transferable only on books of this corporation in person or by attorney, upon surrender of this certificate properly endorsed.

The stock evidenced by this certificate is part of an issue of authorized preferred stock amounting to $15,000, par value, divided into 1,500 shares of the par value of $10 each. The owners of this preferred stock are entitled to receive, and this corporation is bound to pay, out of its surplus or net earnings, a dividend at the rate of seven per cent per annum, upon the par value of said preferred stock, which dividend shall be cumulative and shall be payable in equal semi-annual installments on the first day of each March and September hereafter, before any dividend shall be set apart or paid on the common stock. The preferred stock evidenced by this certificate may be redeemed and retired at any time within five years after September 1, 1921, upon payment to the holder hereof of $10 per share and all accrued preferential dividends, and said preferred stock shall in any event be redeemed and retired by payment therefor of $10 per share, plus all accrued preferential dividends, on or before ten years after September 1, 1921. In case of liquidation or dissolution of said company, the owners of preferred stock shall be paid the par value of their shares, and all accrued unpaid dividends thereon, before any amount shall be distributed among the owners of common stock; but the holders of preferred stock shall not be entitled to further participation, upon liquidation or dissolution, than that above mentioned.

In Witness Whereof, said corporation has caused this certificate to be signed by its duly authorized officers and

its corporate seal to be hereunto affixed at....., Michigan, this..... day of....., 19.....

.....
President.

.....
Secretary.

(SEAL)

PAR
$10
VALUE

§731. Petition for Dissolution in Chancery Under Chapter XL of the Judicature Act.

See Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd Ed., (13563).

STATE OF MICHIGAN,
The Circuit Court for the County of..... In Chancery.

IN THE MATTER OF THE PETITION OF A, B AND C A MAJORITY OF THE DIRECTORS OF D COMPANY, A MICHIGAN CORPORATION, FOR DISSOLUTION OF SAID CORPORATION.

To the Circuit Court for the County of .... In Chancery

Your petitioners, A, B and C, respectively show unto the court:

First. That your petitioners are residents of said county and that they are a majority of the members of the board of directors of said D Company, a corporation organized and existing under the provisions of Act No. 84 of the Public Acts of Michigan of the year 1921, and having its principal place of business in the city of..... in said county.

Second. That said D Company was organized on or about the.....day of....., 19..., for the

purpose of....., pursuant to duly recorded articles of association, a true copy of which is annexed hereto and made a part hereof, marked Schedule A.

Third. That said D Company from the time of its organization, thenceforward, exercised its corporate rights, franchises, powers and privileges and still retains and exercises the same.

Fourth. That at the time of its incorporation, the authorized stock of said D Company was $....., divided into ..... shares of the par value of $..... per share, and that on the ..... day of ....., 19..., the capital stock of said corporation was increased by amendment of its articles of association, to $..... divided into ..... shares of the par value of $..... each; that all of said capital stock was subscribed, paid up in full, issued, and is now outstanding.

Fifth. That until recently said D Company has been actively engaged in the manufacture and sale of ..... and that said business was, during many years, very profitable; that said corporation is a solvent, going concern, but that the unsettled condition of business over the country in general has so restricted the market for the products manufactured by said company, that said business for some months last past has been conducted at a loss, which condition still prevails.

Sixth. That at the beginning of the present business depression, said corporation had invested large sums of money in stock and other equipment for the manufacture of its said products under bona fide contracts with purchasers who were then solvent, but who have since been adjudicated bankrupt, and whose failure leaves said D Company with a large stock of manufactured goods on hand which goods it is unable to sell and convert into cash to meet its maturing indebtedness:

Seventh.—That at a duly called meeting of the board of directors of said corporation held on the .....day of ....., 19..., at which a quorum was present, it was determined by unanimous vote of said board, that it will be beneficial to the stockholders that said corporation be dissolved for the reason that the stock, property and funds of said corporation have been so far reduced by losses and depreciation in value that said corporation is not now able to afford a reasonable security to those who may deal with said corporation.

Eighth. That there are now several suits at law threatened or pending against said corporation on account of matured obligations which said corporation is unable to pay.

Ninth. That the reasons which induce your petitioners to desire a dissolution of said corporation are as follows, to-wit,

(a) That said corporation is unable to successfully carry out the purposes, or attain the objects, for which it was organized;

(b) That it will be beneficial to the creditors and stockholders of said corporation if said corporation be dissolved and liquidated in the orderly manner provided by the statute authorizing the voluntary dissolution of corporations in chancery.

(c) That the business of said corporation cannot be carried on without great loss.

Tenth. That Schedule "B" hereunto annexed, is an inventory of all of the estate, both real and personal, in law and equity, of such corporation, and of all books, vouchers and securities relating thereto.

Eleventh. That Schedule "C" annexed hereto is a true account of the capital stock of said corporation, specifying the names of the stockholders, their residence when known, the number of shares belonging to each, the amount paid

in upon such shares respectively, and the amount still due thereon.

Twelfth. That schedule "D" annexed hereto is a true statement of all encumbrances on the property of said corporation.

Thirteenth. That Schedule "E" annexed hereto is a true account of all of the creditors of said corporation, and all engagements entered into by such corporation which have been fully satisfied and cancelled, specifying the place of residence of each creditor and of other persons to which such engagements were made, if known, and if not known, that fact has been stated; the sum owing to each creditor; the nature of each debt or demand; and the true cause and consideration of such indebtedness in each case.

IN CONSIDERATION OF THE PREMISES, your petitioners respectfully pray:

(1) That an order be made by this court requiring all persons interested in said D Company to show cause, if any they have, why said corporation should not be dissolved, before this court at a time and place to be therein specified, not less than thirty days from the date thereof, and that notice of the contents of such order be served by mail upon all creditors and stockholders of said corporation at least thirty days before the date of such hearing, and be published once in each week for three weeks successively in some newspaper, as this court may direct.

(2) That, on the day appointed in said order, this court may proceed to hear the allegations and proofs of the parties, and to take testimony in relation thereto, and thereupon, if it be determined that a dissolution of said corporation will be beneficial to the stockholders thereof, and not injurious to the public interests, that a decree be then made and entered dissolving said D Company and appointing ....., or some other suitable persons, as receiver

of all of its estate and effects, with all powers usually conferred upon receivers of corporations, together with such additional powers as shall be provided by law, or as shall be necessary or proper.

(3) That pending the hearing upon this petition, the said..... be appointed temporary receiver of all of the assets and effects of said corporation for the purpose of collecting, protecting and preserving the assets and effects thereof pending the determination of said petition and the appointment of a general receiver.

(4) That said temporary receiver, when appointed, may be given authority to continue to fill such orders for goods as may be received by said corporation, provided that such sales shall be upon a cash basis, and not upon credit, and that it may be further provided that said temporary receiver shall have authority to complete such goods from stock now on hand, as may be necessary for the filling of such order.

(5) That a preliminary injunction be granted restraining all persons, firms and corporations whomsoever, their certain officers, agents and attorneys, against commencement of any suit or other proceeding, at law or in equity, against D Company (except by permission from this court first obtained) until the question of dissolution of said corporation shall have been determined by this court.

(6) That the court may, by its order, determine a time, place and manner in which all claims against said corporation shall be heard, determined and allowed, or disallowed, and that all claims disallowed, or not proved as said order may provide, shall be forever barred.

(7) That the persons entitled to participate in the assets of said corporation as creditors upon liquidation thereof, and the order of payment of said claims, and the

amount to be paid to each claimant, may be determined by order of this court.

(8) That the persons entitled to participate in the distribution of the net assets of said corporation, after payment of all indebtedness thereof, may be determined by order of this court.

(9) That your petitioners may have such other and further relief as shall be agreeable to equity and good conscience.

....

Attorney for Petitioners .....

Business Address: ....

STATE OF MICHIGAN }
County of.....} ss.

A, B and C, being severally duly sworn, depose and say, each for himself, that they have respectively read the foregoing petition by them subscribed, and that the same is true of their own knowledge, except as to matters therein stated on information and belief, and as to such matters they believe it to be true.

Deponents further say that the facts stated in said application, and in the annexed accounts, inventories and statements are full and true, so far as the applicants respectively know, or have the means of knowing.

Subscribed and sworn to before me this.....day of ....., 19....

.....

Notary Public.

My commission expires.....

(Schedules to be attached to the foregoing Petition.)

SCHEDULE A

Being a true copy of the Articles of Association of said D Company.

SCHEDULE B

Being an inventory of all of the estate, both real and personal, in law and equity, of said D Company, and of all books, vouchers and securities relating thereto.

SCHEDULE C

Being a true account of the capital stock of said corporation, specifying the names of the stockholders, their residence when known, number of shares belonging to each, and the amount paid upon such shares respectively, and the amount still due thereon.

SCHEDULE D

Being a true statement of all incumbrances on the property of said corporation.

SCHEDULE E

Being a true account of all creditors of said corporation and all engagements entered into by said corporation which may not have been fully satisfied and cancelled, specifying the place of residence of each creditor and all other persons to whom such engagements were made, if known, and if not known, that fact has been stated: The sum owing to each creditor, the nature of each debt or demand, and the true cause and consideration of such indebtedness in each case.

§732. Order to Show Cause—Dissolution in Chancery Under Chapter XL of the Judicature Act.

See Cummins & Beechers' Michigan Judicature and Other Practice Acts, 2nd Ed., (13563).

STATE OF MICHIGAN

The Circuit Court for the County of ..... In Chancery.

IN THE MATTER OF THE PETITION OF A, B AND C, A MAJORITY OF THE DIRECTORS OF D COMPANY, A MICHIGAN CORPORATION, FOR DISSOLUTION OF SAID CORPORATION.

At a session of said court held at ..... in the city of ....., in said county, on the .....day of ..... ,19....

Present: Honorable ....., Circuit Judge.

In this cause, on reading and filing the petition of A, B and C, a majority of the directors of said D Company, a corporation existing under the provisions of Act No. 84 of the Public Acts of Michigan of the year 1921, alleging that it will be beneficial to the stockholders of said corporation that said corporation be dissolved, which petition is verified by the affidavit of said petitioners:

On motion of ....., attorney for said petitioners, it is hereby ordered that all persons interested in said corporation show cause, if any they have, before this court, at the court house in the city of....., in said county, on the.....day of....., 19..., at.....o'clock in the....noon of that day, why said corporation should not be dissolved.

And it is further ordered that notice of the contents of this order shall be served by mail upon all creditors and stockholders of said D Company at least thirty days before

the date of such hearing, and shall be published once in each week for three weeks successively in the....., a newspaper published and circulated in said county, and that the first publication of this notice shall be made within fifteen days after the date of this order.

.....

Circuit Judge.

§733. Decree Dissolving Corporation and Appointing Receiver Under Chapter XL of the Judicature Act.

See Cummins & Beechers' Michigan Judicature and Other Practice Acts, 2nd Ed., (13563).

STATE OF MICHIGAN

The Circuit Court for the County of..... In Chancery.

IN THE MATTER OF THE PETITION OF A, B AND C, A MAJORITY OF THE DIRECTORS OF D COMPANY, FOR DISSOLUTION OF SAID CORPORATION.

At a session of said court held at the court house in the city of ....., in said county, on the ..... day of ....., 19...

Present: Honorable ....., Circuit Judge.

This cause came on to be heard in open court pursuant to an order to show cause, if any, why said corporation should not be dissolved; and

It appearing by proofs on file that said order to show cause has been duly published and served in accordance with the statute in such case provided, and in accordance with the terms of said order; and

It appearing from said petition, and from testimony taken in open court, that a dissolution of said corporation by decree of this court will be beneficial to the stockholders thereof and will not be injurious to the public interests; and

It appearing that the assets of said D Company would be impaired in value if the business established by said company were to cease, and that the assets of said company will be of materially greater value upon sale if such assets may be sold as the assets of a going concern whose business has been uninterrupted:

NOW THEREFORE, IN CONSIDERATION OF THE PREMISES, and the court being fully advised, IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that said D Company shall be and the same hereby is DISSOLVED; and

It is further ordered, adjudged and decreed that ..... and ..... are hereby appointed receivers of all of the estate, effects and assets, both real, personal and mixed, wherever situate, of said corporation, and that before entering upon their duties as such receivers said receivers shall execute a bond in the penal sum of .....dollars, with sufficient sureties to be approved by this court, or by the clerk thereof, which bond shall run to the People of the State of Michigan and shall be conditioned for the faithful discharge of the duties of such receivers and for the due accounting for all money, effects and assets received by such receivers, and for obedience to such further orders as this court may make in the premises; and

It is hereby further ordered, adjudged and decreed that all officers, directors and agents of said corporation, and also the temporary receiver thereof heretofore appointed, shall forthwith turn over and deliver to the receivers hereby appointed all of the estate, property, effects and assets of said corporation and all books of account, notes, bonds and other securities, evidences of indebtedness, papers and documents of every name and nature whatsoever, of said corporation; and

It is hereby further ordered, adjudged and decreed that

said receivers hereby appointed shall have and exercise the power to continue the business of said corporation subject to such further orders as this court may make in the premises, but not exceeding one year from and after the date of this decree, and that said receivers shall exercise all the usual powers and authority and perform the usual duties and be under the usual directions of receivers in courts of equity, and that said receivers shall from time to time report their doings to this court; and

It is further hereby ordered,

(a) That said receivers shall, as soon as practicable after the date hereof, cause the appraisement of the property of said corporation in their hands to be made by two disinterested, competent persons under oath and filed with the clerk of this court; and

(b) That within ten days after completion of said appraisal said receivers shall apply to this court, or to the judge thereof, for direction as to the disposal of said assets; that such application shall be by petition showing what, in the opinion of said receivers, is the most advantageous method of effecting such disposal; that not less than ten days' notice of such application shall be given by mail to all creditors and stockholders known to said receivers and proof thereof shall be filed with the clerk of this court prior to such hearing; and

(c) That the property and assets of said corporation shall be sold at public or at private sale in one parcel, or separately, as this court may hereafter by its order further direct; and

(d) That at least fourteen days' notice of the time and place of sale shall be given, if the sale be a public sale, by publishing the same in a newspaper printed and circulated in the county where the sale shall be made, which publication shall appear once in each week for at least two suc-

cessive weeks prior to said sale, and notice of such sale shall likewise be given by the receivers by mailing a copy of such notice to all creditors and stockholders of said corporation known to said receivers at least fourteen days prior to the date of sale; and

(e) That within ten days after receiving said trust the receivers shall give notice to all creditors personally or by mail (accompanied by blank proof of claim) requiring them to prove their claims within ninety days thereafter by a proof of claim to be filed with the receivers, and in default thereof, that the receivers will proceed to distribute the estate as soon as practicable without reference to claims not proven when dividends are paid; and

(f) That within ten days after the expiration of said ninety days period the receivers shall serve personally, or by mail, upon each of the stockholders and creditors of said corporation a complete list of all creditors who have filed proof of claim, giving in each instance the name, postoffice address, and the amount claimed; and

(g) That after the expiration of twenty days from the time when said notice is given, the receivers shall file all proofs of claims with the clerk of this court, accompanied by notices of any contest which they may decide to make, and said receivers may contest any claim.

It is further ordered, adjudged and decreed that said receivers shall be at liberty to apply to this court for further directions from time to time as they shall be advised.

.....

Circuit Judge.

Attest:

.....

Clerk of said Court.

§734. Bond of Receivers—Dissolution in Chancery Under Chapter XL of the Judicature Act.

See Cummins & Beechers' Michigan Judicature and Other Practice Acts, 2nd Ed., (13563).

STATE OF MICHIGAN,
The Circuit Court for the County of ..... In Chancery.

IN THE MATTER OF THE PETITION OF A, B AND C, A MAJORITY OF THE DIRECTORS OF D COMPANY, A MICHIGAN CORPORATION, FOR DISSOLUTION OF SAID CORPORATION.

BOND OF RECEIVERS

KNOW ALL MEN BY THESE PRESENTS, That we, ... and ..... of the city of ....., County of ....., State of Michigan, as principals, and ..... and ....., of the same place, as sureties, are held and firmly bound unto the people of the State of Michigan in the sum of ..... dollars, to be paid to the said people of the State of Michigan, or their assigns, for which payment well and truly to be made we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this ..... day of ....., 19...

WHEREAS, By order of the Circuit Court for the County of ....., in Chancery, made on the ..... day of ....., 19..., in the above entitled cause, it was, among other things, ordered that the principals herein be appointed receivers of D Company, for the purpose of receiving, collecting and conserving all of the estate, effects and assets of said company and carrying on

and continuing its business in the regular course of trade not exceeding one year, subject to such further orders as said court may make in the premises:

NOW THEREFORE, the condition of this obligation is such that if the said principals herein shall well and faithfully perform all and singular their duties as such receivers, and shall abide by and perform all orders which said court may lawfully make in relation thereto, and in all respects faithfully discharge the duties of said trust, then this obligation to be void; otherwise the same to remain in full force.

In Presence of } .....(L. S.)
..... } .....(L. S.)
..... } .....(L. S.)
.....(L. S.)

STATE OF MICHIGAN }
County of..... } ss.

..... and .....
being duly sworn, depose and say, each for himself, that he is worth the amount of the penalty of the within bond over and above all debts, demands, liabilities and exemptions, in property subject to execution under the laws of said state.

.....
.....

Subscribed and sworn to before me this ..... day of ....., 19...

.....
Notary Public.

My commission expires.....

I hereby approve the form of the foregoing bond and I hereby approve of the sureties thereon.

Dated, this ..... day of ....., 19...

.....
Circuit Judge.

§735. Trustee Corporation—Articles and Declaration of Trust

(Form Accepted by Secretary of State)

ARTICLES OF ASSOCIATION OF TRUSTEES OF TATUM LEASE SYNDICATE

We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of 1921, entitled "An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities, to prescribe the conditions upon which corporations may exercise their franchises," etc., do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I

The name assumed by this association and by which it shall be known in law, is TRUSTEES OF TATUM LEASE SYNDICATE.

ARTICLE II

This corporation intends to proceed under Section 1, Chapter 1, Part 1, of the above act.

ARTICLE III

The purpose or purposes of this corporation are as follows:

To administer and manage a trust estate organized under the provisions of the common law and created by a certain contract in writing, an exact copy of which contract is hereunto annexed and made a part hereof, and such amendments thereof as shall hereafter be lawfully made,

and to operate and carry on the business and purposes of the trust as in said agreement set forth.

ARTICLE IV

Principal place where company will operate is TOYAH in the County of REEVES, State of TEXAS.

Address of main office in Michigan is 504 Broadway Market Building, Detroit, Michigan.

Address of main office outside of Michigan is Toyah, Texas.

ARTICLE V

The nature and value of the trust property is the sum of fifty-two thousand three hundred and ten ($52,310.00) Dollars, all of which has been paid in.

ARTICLE VI

The term of this corporation is fixed at thirty years.

ARTICLE VII

Names of stockholders, their residences and shares subscribed by each are:

NAME	RESIDENCE	NO. OF SHARES
Clayton W. Waddington,	Toyah, Texas.	Com. 7998
Clarence E. Lehr,	702 Penobscot Bldg., Detroit, Mich.	1
Ella M. Robinson,	Broadway Market Bldg., Detroit, Mich.	1

ARTICLE VIII

The names and addresses of officers and directors (or an attorney in fact) for the first year of the corporation's existence are as follows:

NAME	OFFICE	ADDRESS
Clayton W. Waddington,	President,	Toyah, Texas.
Clarence E. Lehr,	Vice-President,	702 Penobscot Bldg.
Ella M. Robinson,	Secretary-Treasurer,	Broadway Market Bldg., Detroit, Mich.

IN WITNESS WHEREOF, We, the parties designated, as provided by law, by the parties associating as shown under Article VII of these articles, for the purpose of giving legal effect to these articles, hereunto sign our names this 25th day of May, A. D., 1922.

CLARENCE E. LEHR,
C. W. WADDINGTON,
ELLA M. ROBINSON.

STATE OF MICHIGAN }
County of Wayne.... } ss.

On this 25th day of May, A. D., 1922, before me, a Notary Public in and for said County, personally appeared Clayton W. Waddington, Ella M. Robinson and Clarence E. Lehr, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

(Signed) DENNIS BOYLE,
Notary Public, Wayne Co., Mich.

My commission expires April 2nd, 1923.

TATUM LEASE SYNDICATE

DECLARATION OF TRUST

THE STATE OF MICHIGAN }
County of Wayne..... } ss.

KNOW ALL MEN BY THESE PRESENTS:—

That we, C. W. WADDINGTON, ELLA M. ROBINSON and CLARENCE E. LEHR, for ourselves and our successors, do hereby make and enter into this Declaration and Articles of Trust, and do hereby declare as between ourselves, and with all persons, who may hereafter become interested in, and especially with all persons who may hereafter convey or deliver property of any kind or character to us or to our successors as such Trustees, and all persons who may become owners of, or interested in any way in any of the units or certificates of beneficial interest which may be issued in this Trust under the terms and provisions of this instrument, that we shall, and our successors will as Trustees hold and administer all properties of any kind and all kinds whatsoever, that may hereafter be conveyed or declared to us, or received by us as such Trustees, together with the proceeds and mutations thereof, in Trust for the following purposes, and in the manner and subject to the stipulations herein contained, viz:—

ARTICLE ONE

DESIGNATION

The Trustees in their collective capacity shall be known and designated as TATUM LEASE SYNDICATE; they shall hold, manage, control, operate and administer the Trust Estate, and execute and sign all written instruments. Such name, however, is intended as a designation or title of the Trustees in their collective capacity in which they shall transact the Trust business.

Title to property acquired under the terms of this Declaration of Trust shall vest in and be held by the Trustees and any conveyance or property rights of any kind, character or description, which at any time may be made to or for the use of TATUM LEASE SYNDICATE shall vest the title thereof in the Trustees thereof.

ARTICLE TWO

POWERS, DESCRIPTION, AUTHORITY

The Trustees shall have full, absolute power, discretion and authority:—

1. To purchase, acquire in any manner and sell, exchange or otherwise dispose of oil, gas and other mineral leases and rights in any of the United States and to prospect for, mine, develop and generally deal in oil, gas and all other mineral leases, lands, rights, royalties and privileges.

2. To buy, sell, store and transport, and otherwise handle oil, gas and other minerals and mineral substances in any of the United States in any manner, and to any extent deemed proper by the Trustees thereof.

3. To refine or otherwise treat petroleum, oil, gas and all other minerals, mineral solutions and substances in any way, and to own, manage, control, operate and dispose of refineries, mills and plants of any kind and character whatsoever, and at any place deemed proper by the Trustees.

4. To own, manage, control, operate, lease and otherwise dispose of drilling outfits, pipes, pipe lines, pumping stations, transportation systems, shops, tanks, wharves, boats and every kind and character of property whatsoever, that the Trustees thereof may deem necessary, convenient or useful in the proper execution of its business, including land, rights of way, telephone, telegraph systems, office buildings, etc.

5. To purchase, sell, own, mortgage, hypothecate, ex-

change and generally to deal in any and all stocks, bonds, shares, certificates of beneficial interest, notes and other securities of every nature whatsoever.

6. To lease, rent, maintain, improve; and to sell, pledge, exchange, mortgage, hypothecate or otherwise dispose of and deal with any property of any kind or character which the Trustees may acquire in the transaction of the business hereof, or in which they may be interested.

7. To borrow money in such amounts and for such time and upon such terms and conditions as they may consider to the best interest of the Trust estate, and to make, execute and deliver their promissory notes, bonds and other evidences of indebtedness with or without security; and to make, execute and deliver all necessary, proper or requisite deeds, conveyances, mortgages or other instruments securing the payment of such indebtedness.

8. To make, and enter into contracts relative to and for the purpose of the drilling of oil and gas wells.

9. To organize and promote corporations and associations.

10. To buy, sell and otherwise handle and dispose of oil well supplies and machinery.

11. To take any action of any kind or character that may in the discretion of the Trustees, appear to be necessary, expedient or convenient in carrying into effect the purposes and transacting the business of this Trust.

12. The Trustees shall:—

(a) Take and hold the title, both legal and equitable, to all property at any time conveyed or delivered to or held by them, and included in the Trust estate, subject only to the specific limitations herein contained. Said property shall be held by said Trustees jointly, under the same tenure as joint tenants would hold the same at common-law and not as tenants in common, in Trust, in accordance with,

and under the terms and provisions hereof, and administer and dispose of the same for the benefit of the holders of unit certificates of beneficial interest issued hereunder in proportion to their respective interests as evidenced by said unit certificates.

(b) During the continuance of this Trust, the trustees shall have absolute control, management and disposition of all the Trust Estate, and shall likewise have the full and absolute control, management and disposition and conduct of its business; and free from any control or authority and discretion, to carry out and perform all the duties, powers and authority hereby and hereunder devolving upon and reposed in them.

(c) In the name of TATUM LEASE SYNDICATE OR IN THEIR OWN NAMES as Trustees hereunder, the trustees hereof shall have power, and it shall be their duty to institute, maintain, defend and carry on all actions, suits and proceedings of whatever character, and before any court, tribunal, board or authority, necessary, proper or convenient in the conduct of the business of this Trust.

(d) The trustees shall have power to sell, transfer, and assign and convey the whole or any part of the Trust estate, and pledge, mortgage, hypothecate or otherwise dispose of and manage the same in such manner and on such terms and for such consideration and subject to such restrictions, agreements and reservations as they in their absolute discretion may deem best; provided however, that no sale of the physical property of the Trust Estate as an entirety shall be binding or effective until ratified or approved by at least fifty-one per cent of the holders in amount of the units of beneficial interest herein at the time outstanding, without reference to their priority if any, at a meeting of such unit holders duly called and regularly held in accordance with the provisions hereof.

(e) The trustees shall have power and authority to appoint such officers, agents, and employees as they may deem necessary, requisite or convenient, and may confer by way of substitution, such power and authority upon such officers, agents and employees as they, the trustees, may deem expedient.

(f) The trustees shall have the power and authority, in their discretion, to declare such dividends from time to time as can be paid out of the net gains and profits accruing from the management and operations of the Trust Estate; provided, however, that no distributions or dividends of or from the Trust Estate shall be made or paid to any unit certificate holder as such, which shall reduce the value of the Trust Estate, as such value may from time to time be determined or appraised by the trustees hereof, below the aggregate amount of the enforceable debts and obligations of the trustees, whether matured or unmatured, nor shall any such distribution or dividend be paid out of the net gains or profits which may be needed for the purposes of the business, or for the payment of debts, or the development of properties, or for the reserve or sinking fund.

(g) Neither the trustees nor any of their agents, or employes shall have any right or power or authority under any circumstances whatsoever, to bind the unit certificate holders herein, or any of them personally, and in every contract or undertaking that shall be entered into in the name of the trustees or relating to the business of the Trust Estate, reference shall be made to this instrument, and to the book and page of the deed records of the county and state, in which the same is recorded; and the person, firm, corporation, association or trustee so contracting with the trustees herein, or their agents or employees, shall look to and apply to the Trust Estate, for the payment of any debt,

claim, damage, judgment or decree, whether arising from contract or tort, or of any money that may become due or payable in any way to him or them; and neither the trustees nor the unit certificate holders, nor any of them, present or future, shall be personally liable therefor, or for any debt, claim or liability incurred, or in any agreement or contract made by the trustees or by any of their officers, agents or employees. No amendment changing this paragraph in any substantial manner shall ever be made.

(h) Any trustee hereunder may resign as such by a written instrument, signed and sealed by him, and acknowledged by him in the manner prescribed for the acknowledgment of deeds by the statutes of this state, and deposited by him with the depository hereunder and filed for record in the County where this Declaration of Trust is filed.

(i) Any trustee may be removed as such by a vote of the majority of the trustees hereof taken at each of two meetings of trustees, the second of which meetings shall be held not later than a week after the first, provided that such removal shall be ratified and approved by a vote of not less than two-thirds of the holders in amount of the unit certificates of beneficial interest herein at the time outstanding, without reference to their priority, if any, at a meeting of such certificate holders, duly called and regularly held in accordance with the provisions hereof. Upon such ratification or approval of such removal, the trustee so removed shall automatically cease to be a trustee under this instrument, and a corresponding vacancy in the number of trustees shall be created; and upon such removal a certificate thereof shall be executed and acknowledged by the trustee or trustees remaining in office and filed with the depository.

(j) Any vacancy occurring at any time from any cause, in the number of trustees, shall be filled by the remaining

trustees, the trustee so appointed, however, to hold office only until the next regular meeting of the certificate holders herein, unless his appointment shall be approved and ratified by fifty-one per cent of the unit certificate holders in amount by a vote duly taken at such meeting. Until such vacancy is filled, or while any trustee is absent, or from any other reason incapacitated, or any trustee refuses to act as such, the other trustee shall have and exercise all the rights and powers hereunder, and the certificate of the other trustee of such vacancy, incapacity, absence or refusal to act, shall be conclusive in favor of all persons dealing with the Trust Estate. In case of such vacancy, or of the appointment of a new trustee or trustees, the new trustee shall set jointly with the remaining trustees.

(k) Any trustee may by written power of authority delegate his power as such, for a period of not exceeding six months at any one time, to any other trustee or trustees, provided that in no case shall less than two trustees exercise the powers hereunder.

(l) Each trustee upon his acceptance of the office of trustee shall execute a copy of this instrument or any appropriate Declaration of Trust hereunder and deposit the same with the depository.

(m) The trustees shall meet at such time and place as they may fix from time to time by the by-laws, rules, regulations or otherwise. Any two trustees shall constitute a quorum and the concurrence of all trustees shall not be necessary to the validity of any action taken by them, but a decision expressed by a vote of not less than two trustees shall be conclusive, except as otherwise herein or in the by-laws adopted by the trustees provided to the contrary. Special meetings of the trustees may be held from time to time upon a call of a majority of the trustees or the President of the Trustees.

(n) The trustees as such shall be entitled to compensation for their services at the rate of Five ($5.00) Dollars per year each to be paid at the end of the year, but in their individual or personal capacity they may severally or jointly do or perform such like, similar or any service for the Trust as could be done or performed by any other person or entity, and charge and be paid therefor such sum or sums as the trustees in their official capacity may approve as adequate and reasonable.

(o) The trustees may make, amend, adopt or repeal such by-laws, rules and regulations not inconsistent with the terms of this instrument, as they may deem necessary and desirable for the conduct of their business and for the government of themselves, their officers, agents, employes, servants or representatives.

(p) The trustees may with the written consent of fifty-one per cent of the unit certificate holders in amount (1) terminate this Trust or (2) alter or add to this Declaration of Trust except as otherwise provided herein. And if it shall seem judicious to them to do so, they may with like consent convey the Trust Estate to new or other trustees, or to a corporation, being first duly indemnified for any outstanding liability or obligation. The instrument setting forth such termination, alteration or conveyance shall be signed by at least two trustees and deposited with the depository and such instrument shall be conclusive of the existence of all facts and of compliance with all prerequisites necessary to the validity of such termination, alteration, addition or conveyance, whether stated in such instrument or not, upon all questions as to title, or affecting the rights of third persons, provided, however, that no substantial change shall ever be made in subdivision (g) of these articles.

(q) The trustees shall adopt a common seal and use

or cause to be used the same in the attestation of instruments affecting the title to real estate and such other instruments as to them may seem proper.

(r) The trustees may vote in person or by proxy all shares, certificates of beneficial interest, and other securities held by them, having voting power, and may collect and receive the income, dividends, interest or profits on such shares and securities.

(s) No purchaser from the trustees shall be bound to see to the application of the purchase money or other consideration paid or delivered by or for said purchaser.

(t) Any trustee may own, acquire and dispose of unit certificates of beneficial interest in this Trust to the same extent as if he were not a trustee.

(u) The trustees shall take and pay out of the Trust Estate all taxes lawfully assessed against them as trustees under this instrument, wherever the same may be assessed, and the fact that any tax may be assessed against the trustees in the city or town where any unit certificate holder resides, shall not in any way affect the right of such unit certificate holder to receive in full and on an equality with all other certificate holders of the same class the dividends upon his units and his due proportion of the assets in liquidation.

ARTICLE THREE

DEPOSITORY

The Citizens State Bank of Toyah, Texas, is hereby designated as the depository of this Declaration of Trust, and amendments and alterations to the same, and such other records of and pertaining to the Trust Estate as may be from time to time designated by the trustees hereunder; provided, that the depository shall at all times make delivery of any such papers which it may have pertaining

to the Trust Estate in accordance with the instructions in writing of the trustees; and, provided, further, that the trustees may at any time change depositories when at any time deemed advisable by them. One of the originals of this Declaration of Trust shall be deposited with the depository to be subject to the inspection of any person or persons at any time dealing with the trustees.

ARTICLE FOUR

LIABILITY OF TRUSTEES

The trustees shall not be liable for any error of judgment or for any loss arising out of any act or omission in the execution of this Trust, so long as they act in good faith, nor shall any trustee be personally liable for the acts or omission of any other trustee, or for the act or omissions of any officer, agent or employee elected, appointed by or acting for them. No trustee hereunder shall be liable in any event save for his own personal breach of trust. No bonds or surety or sureties shall ever be required of any of the trustees as such acting hereunder unless the holders of at least two-thirds in amount of the units of beneficial interest at that time outstanding, without reference to their priority, if any, shall so request and require. Each trustee shall be indemnified by and receive reimbursement from the Trust Estate against any personal liability, claim, damages and loss by him incurred and suffered in the Administration of the Trust Estate or any part or parts thereof, or of any of the provisions of this instrument, except such as may arise from his personal wilful default; but all such indemnification and reimbursements shall be limited to the Trust Estate, and under no circumstances and in no event shall the holders of certificates of beneficial interest, or any of them, be subject to any personal liability by virtue hereof, or of any of these provisions of this instrument.

ARTICLE FIVE

UNIT CERTIFICATES OF BENEFICIAL INTEREST

The authorized capital of this Trust shall be Two Hundred Thousand ($200,000.00) Dollars, divided into 20,000 unit certificates of beneficial interest of the par value of Ten ($10.00) Dollars each. The trustees are hereby authorized to issue and deliver unit certificate of beneficial interest evidencing the ownership of such unit at such time and in such amount as they may deem proper in payment for any property authorized to be purchased by the terms of this Trust, at its reasonable value, as such value may be appraised by them, or they may issue and deliver the same in payment for labor performed or work done, or money paid, or for the purpose of developing any of the properties of the Trust Estate, or carrying on any business hereunder authorized, or for the performance of any work done in the organization of this Trust, or for any purpose necessary or requisite in the due execution of this Trust. The trustees shall be the exclusive judges of the value of the properties taken in or of the work performed. Said units shall be evidenced by unit certificates of beneficial interest in the Trust Estate in the following form, to-wit:

TATUM LEASE SYNDICATE

20,000 Units Par value $10.00 Each

This is to certify that ..... is the owner of ..... units of the TATUM LEASE SYNDICATE, a Trust Estate, transferable only on the books of the Syndicate by the owner thereof, in person or by duly authorized authority, upon the surrender of this unit certificate properly endorsed. This unit certificate represents a beneficial interest and makes the owner thereof the owner of one-twenty thousands (1/20000), of the Trust Estate for each

unit represented thereby, subject, however, to the provisions and covenants contained in the Declaration of Trust of C. W. Waddington et al., trustees, and deposited with the Citizens State Bank of Toyah, Texas, the depositories thereof, and recorded in the deed record of Reeves County, Texas, and any amendments thereto and by-laws of said Syndicate, present or future, and the provisions thereof. No member of this Syndicate or owner or holder of its unit certificate, as such, shall have authority, power or right whatsoever, to do or transact business for or on behalf of, or binding upon the Syndicate or any member thereof; and no member of this Syndicate shall be personally liable for any debts, covenants, demands, contracts of any kind or torts of this Syndicate beyond the payment in full for which his unit or units were sold to him by the Syndicate. This unit certificate shall be the sole and only evidence of membership in this Syndicate.

Witness the signatures of the officers of this Syndicate duly authenticated.

Issued and signed this ..... day of ..... A. D. 19...

....

Secretary. President.

For value received ..... hereby sell, assign and transfer unto ..... units of the beneficial interest of the TATUM LEASE SYNDICATE represented by the within certificate, and do hereby appoint and constitute ..... my agent and attorney in fact to transfer the said certificate on the books of the within named Syndicate with full powers of Substitution in the premises.

Dated this ..... day of ..... A. D., 19...

In the presence of ....

.....

A charge of fifty cents will be made for the transfer of each certificate.

Such unit certificate shall be signed by the President or Vice-President of this Trust and attested by the Secretary or Assistant Secretary of this Trust. They shall be negotiable unless otherwise provided by endorsement thereon made. They shall evidence the beneficial interest of the party to whom issued, his heirs, executors, administrators, and assigns in the property owned by the Trust.

The unit or units or interest represented by the unit certificate may be transferred on the books of the Syndicate by an appropriate instrument in writing and upon the surrender of the unit certificate properly endorsed, and a new unit certificate shall be issued to the transferee, who shall become a *cestui que trust* in the place of the transferrer.

The person in whose name a unit certificate stands on the books of the trustees shall be conclusively considered by the trustees and by each and all of the unit certificate holders, to be the absolute owner of such unit certificate, and of the right and interest evidenced thereby, and the trustees shall not be affected by any notice to the contrary, either actual or constructive; and it shall not be the duty of the trustees or the unit certificate holders, upon transferring such unit certificate or paying dividends on same, or distributing assets on termination, or at any time to inquire in any way into the relation of assignor or assignee, pledger or pledgee, trustee or *cestui que trust,* guardian or ward, or into any other similar relation with respect to said unit certificate, or in any right or interest in the same. The trustees shall be under no liability or responsibility of any kind or character for making or causing to be made upon their books the transfer of any unit certificate out of the name of the prior unit certificate

holder upon or in pursuance of authority in writing signed by such prior registered holder.

Article Six

CERTIFICATE HOLDERS

No unit certificate holder shall have any title, legal or equitable, to the Trust Estate, real or personal, from time to time held by the trustees, or any part thereof, each unit certificate holder's interest being such as is defined in this instrument. No unit certificate holder shall have the right to call for or demand or secure any partition or accounting during the continuance of the Trust hereby created; and the Trust shall not be dissolved nor its business affected by the death, insolvency or incapacity of one or more of the trustees or unit certificate holders; nor shall such death, insolvency or incapacity entitle the legal representative or heirs or assigns, voluntary or involuntary, of such deceased or incapacitated unit certificate holder or trustee to any accounting or to any action, at law or equity, or otherwise against the Trust Estate, or any part thereof, but such legal representative, heirs or assigns shall succeed to the right of the deceased, insolvent or incapacitated unit certificate holder or trustee subject to this Agreement and Declaration of Trust, and any amendment thereto, and shall succeed to nothing more.

No assessment or other personal liability or obligation shall under any circumstances or in any event be made or imposed upon the unit certificate holders as such, or any of them, without the consent in writing of each and every unit certificate holder, and the endorsement and notation of such consent and of the extent and terms thereof upon each outstanding certificate. Neither the trustees nor any of them, nor any of their officers, agents, servants or em-

ployees shall have the right, power or authority under any circumstances or in any event to act as the agent of the unit certificate holders, or any of them, or to impose any liability or obligation in their behalf.

Notice delivered personally or mailed to any unit certificate holder at the last address registered by him with the trustees shall be binding upon him.

The unit certificate holders at the first annual meeting as herein prescribed, and at each annual meeting thereafter, shall elect three trustees, and upon such election and qualification as herein provided, the trustees then in office shall cease to hold and exercise any further rights, powers, privileges, duties, title, interest and estate hereby or at any time vested in the trustees then in office, shall immediately devolve upon and vest in the new trustees then elected and qualifying. Such election of trustees shall be by majority vote of the unit certificate holders in amount then present and voting at any annual meeting; provided that no election shall be held at any meeting where a quorum, as herein defined, is not present either in person or by proxy. The registered holders of unit certificates for the time being and no one else shall be the *cestui que trustent* of the Trust Estate held by the trustees under this instrument. It is expressly declared that a Trust and not a partnership is hereby created by this instrument and that the unit certificate holders are *cestui que trustent* only, under this instrument, and hold no other relation to the trustees than that of *cestui que trustent,* with only such rights as are conferred upon them as such *cestui que trustent* thereunder. Neither the trustees nor the unit certificate holders, nor any of them, shall be deemed in any way whatsoever to be liable otherwise than in this instrument specifically provided.

ARTICLE SEVEN

OFFICERS OF THE TRUST ESTATE

The trustee shall annually elect from among their number a president; and shall annually elect a treasurer, a secretary and as many vice presidents as may be deemed necessary to transact the Trust business, and none of the foregoing officers need be a trustee except the president, and the office of secretary and treasurer may be held by one person. The trustees shall have authority to appoint such officers, agents, counsel and attorneys as they may deem necessary and expedient in the conduct of the Trust business and shall have authority to accept resignations and fill any vacancy in any office appointed by them for the unexpired term, and shall likewise have authority to elect temporary officers to serve during the absence or disability of the regular officers. The trustees may by a vote of the majority of the trustees, for the time being, remove any officer or agent elected or appointed by them.

The president shall preside at all meetings of the trustees, shall sign unit certificates of beneficial interest, or units and perform such other duties and hold office for such period as may be determined by the trustees or provided by the by-laws.

The vice-president may perform the duties of the president in his absence, and perform and render such other services as the by-laws or trustees may prescribe or require.

The secretary or treasurer shall countersign all unit certificates of beneficial interest or units, shall attend all meetings of the unit certificate holders and of the trustees, and keep minutes of such meetings, shall keep such records and books, and render such service as may be prescribed and

required by the by-laws or imposed upon him from time to time by the trustees.

The treasurer shall perform the duties usually incident to such position, and such as may be prescribed by the by-laws, and prescribed from time to time by the trustees. The trustees may, in their discretion deliver in trust possession, care or custody of any moneys or other properties of the Trust Estate. to the treasurer or other officer, agent or employee, and the trustees shall not be personally liable or responsible for the default of any such officers, agents, or employee, provided they shall have exercised reasonable care in their selection.

The trustees may from time to time appoint such other officers and agents as to them may seem proper and prescribe their duties; and the trustees shall fix the compensation of any and all officers, agents and employees whom they may select or appoint.

ARTICLE EIGHT

MEETING OF UNIT CERTIFICATE HOLDERS

There shall be an annual meeting of the unit certificate holders on the fourth Tuesday in January, A. D., 1922, and annually thereafter. Meetings of the unit certificate holders shall be called by the secretary or acting secretary (a) when ordered by a majority of the trustees then in office; or (b) upon request made to the president or to the trustees by a majority in amount of the unit certificate holders of all outstanding unit certificate of beneficial interest. Such meetings shall be held at Toyah, Texas, or at such other place as the trustees, by resolution or by an appropriate by-law, may designate. Notice of such meetings shall be given by the secretary or acting secretary by mailing such notices to each unit certificate holder entitled

to vote thereat at his registered address at least ten days prior to the date of such meeting. Each unit certificate holder in order to be entitled to notice shall register his address with the secretary. At all meetings of the unit certificate holders, each holder shall be entitled to one vote for each unit held by him. These may be voted in person or by proxy in writing. No business except to adjourn shall be transacted at any meeting of the unit certificate holders, unless a quorum consisting of the holders of at least fifty-one per cent in amount of all units outstanding and entitled to vote thereat, is present in person or by proxy.

Article Nine

CONTINUATION DISSOLUTION

The trustees (g) may at any time, with the approval of fifty-one per cent in amount of all holders of unit certificates of beneficial interest herein then outstanding, assign, transfer and deliver all the properties real or personal, belonging to the Trust, to a corporation to be organized under the laws of such state as the trustees may determine, with so far as practicable the same powers herein conferred upon the TATUM LEASE SYNDICATE, or in case, by reason of any laws then in force, it shall not be practicable, in the judgment of the trustees, for a single corporation to receive title to all such property and carry on the business then being carried on by the Trust, the trustees may assign, transfer and deliver the same to two or more such corporations. In case of such transfer there shall be issued to the trustees all the shares or capital stock of such corporation or corporations, to which all said property shall be so transferred, to be presently issued, which shall be divided into the same number or similar classes having the same or similar properties, dividend rights and rights in

liquidation, and the same or similar voting powers, and other rights respectively as the units at such time outstanding hereunder, and shall be issued to the *cestui que trustent* pro rata to their unit at such time outstanding hereunder.

(b) Unless sooner terminated in the manner provided in paragraph (a) of this article, this Trust shall continue for the term of fifty years, at which time the then trustees shall proceed to wind up its affairs, liquidate its assets, and distribute the same among the holders of units according to their respective interest and priorities; provided, however, that if prior to the expiration of said period the trustees shall vote to terminate the Trust at an earlier date and such vote of the trustees shall be confirmed and approved by the holders of not less than two-thirds in amount of the units at the time outstanding, without reference to their priorities, if any, then and in such event this Trust shall terminate on the date so fixed, for the purpose of winding up their affairs and liquidating this Trust, the trustees shall continue to act as such until such duties shall have been fully performed, provided that in no case shall this Trust continue for a greater length of time than allowed by law.

ARTICLE TEN

EXECUTION OF INSTRUMENTS

All transfers of real estate shall be made by the trustees, or by the president of the trustees and attested by the secretary of the Syndicate and sealed by the seal of the Syndicate under a proper resolution passed by the Board of Trustees. In the event such transfer is made by the trustees in person the signature of any two trustees shall always be sufficient to pass the title to any such property. The execution of all contracts and of all conveyances and trans-

fers and all other instruments relating to the Trust Estate or any part thereof, by any two trustees shall always be sufficient; and any such instrument or instruments so executed shall as between the parties hereto, their assigns or successors entitled hereunder, be taken and accepted as prima facie and conclusive evidence of the truth of the fact so stated and recited and no other proof thereof shall ever be required.

Article Eleven

ACKNOWLEDGMENT OF INSTRUMENTS

Any unit certificate, written instrument or paper in execution of which by their agent is authorized by the trustees, or any one of them, or by any unit holder or holders, or their proxies which it may be deemed advisable to place on record, may be acknowledged by said agent or agents, trustee or trustees, or parties signing, in the manner as from time to time is prescribed by law for acknowledgment of deeds in the state where such instruments are to be recorded.

Article Twelve

DEFINITION OF TERMS

The term "trustee or trustees" as employed in this instrument shall be taken to mean the trustees herein named, and their successors for the time being. The term "Unit Certificate Holders" and "Unit Holders" shall include all the unit certificate holders, both regular and special, to the extent that any such certificates may be outstanding in any class, and shall be taken to mean the individual, partnership, joint stock company, corporation, association or trust in whose name a unit or unit certificates of beneficial interest, either regular or special, stands upon the books of the Trust for the time being.

The words "trustee," "certificate," "unit" and "holder" shall include the plural as well as the singular number.

The word "depository" shall be taken to mean the depository for the time being designated by the trustees in accordance with the provisions of this instrument.

ARTICLE THIRTEEN

DATE OF CREATION OF TRUST

This Declaration of Trust shall take effect and be in force from and after the due execution and acknowledgment hereof by any two trustees herein named; provided, that if any of the trustees herein named shall fail to execute and acknowledge this instrument within sixty days from the date hereof, the office of such trustee shall be filled in the manner herein before provided.

Upon the execution and acknowledgment of this instrument, within the time provided, such person shall be deemed to be vested with all powers, duties and obligations under him imposed as a trustee hereunder.

C. W. WADDINGTON,
ELLA M. ROBINSON,
CLARENCE E. LEHR.

§736. Trustee Corporation—Articles of Association.

(Form Accepted by Secretary of State)
(Corporation for Pecuniary Profit)

ARTICLES OF ASSOCIATION
OF
THE TRUSTEES OF THE UNITED STATES SAVINGS ASSOCIATION

We, the undersigned, desiring to become incorporated under the provisions of Act No. 84 of the Public Acts of

1921, entitled "An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities; to prescribe the conditions upon which corporations may exercise their franchises," etc., do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I

The name assumed by this association, and by which it shall be known in law, is THE TRUSTEES OF THE UNITED STATES SAVINGS ASSOCIATION.

ARTICLE II

This corporation intends to proceed under Sections one and three, Chapter one, Part one, of the above act.

ARTICLE III

The purpose or purposes of this corporation are as follows: To administer and manage a Trust Estate, organized under the provisions of the Common Law, and created by a certain contract in writing, an exact copy of which contract is hereunto attached and made a part hereof, and such amendments thereof as may hereafter be lawfully made, and to offer for sale, and sell, the Membership Contracts provided for by the said Contract, and to invest the funds in accordance with the terms and stipulations of said contract.

ARTICLE IV

Principal place where company will operate is Detroit, in the County of Wayne, State of Michigan.

Address of main office in Michigan is 316 Hammond Building, Detroit, Michigan.

Address of main office outside of Michigan, None.

ARTICLE V

The nature and value of the Trust property is the sum of Five Thousand Dollars, of which Two Thousand Nine Hundred Dollars has been paid in and the balance has been subscribed for by the Trustees under said Trust Instrument, who have agreed to pay the same into the Treasury when called by the Trustees.

The amount of actual capital, in cash or property or both, which this corporation owned and possessed at the time of executing these articles is Three Thousand Five Hundred Two and Sixty-Four One Hundredths Dollars, ($3502.64).

ARTICLE VI

The term of this corporation is fixed at thirty years.

ARTICLE VII

Names of stockholders, their residences and shares subscribed by each are:

NAME	RESIDENCE	NO. OF SHARES
Chas. W. Harrah,	Majestic Bldg., Detroit	A one-fifth interest
Maynard D. Follin,	Hammond Bldg., Detroit	A one-fifth interest
Chas. B. Sawyer,	Hammond Bldg., Detroit	A one-fifth interest
Frank E. Lane,	Hammond Bldg., Detroit	A one-fifth interest
Ezra H. Jones,	Penobscot Bldg., Detroit	A one-fifth interest

ARTICLE VIII

The names and addresses of officers and directors (or an

attorney in fact) for the first year of the corporation's existence are as follows:

NAME	OFFICE	ADDRESS
Chas. W. Harrah,	President,	Majestic Bldg., Detroit
Frank E. Lane,	Vice-President	Hammond Bldg., Detroit
Ezra H. Jones,	Secretary,	Penobscot Bldg., Detroit
Maynard D. Follin,	Treasurer,	Hammond Bldg., Detroit
Chas. B. Sawyer,	Managing Director,	Hammond Bldg., Detroit

ARTICLE IX

Any special statement or statements to the primary organization of this corporation and not included in the foregoing requirements may be set forth under this article.

The trustees are to act until their successors are elected. Succession will be only by death or by sale of trustee's interest, in the manner provided by the contract creating the Trust, and no other persons than the incorporators are, or may become, members of the Trust except upon the death of a trustee, or the sale of his interest in the Trust, as therein provided.

IN WITNESS WHEREOF, We, the parties designated, as provided by law, by the parties associating as shown under Article VII of these articles, for the purpose of giving legal effect to these articles, hereunto sign our names this twenty-fifth day of January, A. D. 1922.

CHARLES W. HARRAH,
FRANK E. LANE,
EZRA H. JONES,
MAYNARD D. FOLLIN,
CHAS. B. SAWYER.

STATE OF MICHIGAN }
County of Wayne... } ss.

On this 25th day of January, A. D. 1922, before me, a Notary Public in and for said County, personally appeared Chas. W. Harrah, Frank E. Lane, Ezra H. Jones, Maynard D. Follin, and Charles B. Sawyer, known to me to be the persons named in, and who executed the foregoing instrument, and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

(Signed) EDITH SHERMAN,
Notary Public, Wayne Co., Mich.

My commission expires May 4, 1924.

§737.—Trustee Corporation—Articles of Association.

(Form Accepted by Secretary of State)

ARTICLES OF ASSOCIATION

OF

THE TRUSTEES OF THE MICHIGAN GROCERY CO-OPERATORS OF AMERICA

We, the undersigned, desiring to become incorporated as a trustee corporation under the provisions of Act No. 84 of the Public Acts of 1921, entitled "An act to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities, to prescribe the conditions upon which corporations may exercise their franchise," etc., to carry out the terms of a written common law trust agreement hereinafter referred to, do hereby make, execute and adopt the following articles of association, to-wit:

ARTICLE I

The name assumed by this association, and by which it shall be known in law, is The Trustees of the Michigan Grocery Co-operators of America.

ARTICLE II

This trustee corporation intends to proceed under Section 3, Chapter 1, Part 1 and Subdivision 1, Chapter 1, Part 4 of the above act.

ARTICLE III

The purpose or purposes of this trustee corporation are as follows: The administration and management of the corpus of the trust estate, under and pursuant to a certain agreement creating an express trust under the common law, (a verified copy of which is hereto attached and made a part hereof) together with all other and further additions, accumulations and accretions thereto at any future time, which involves primarily the establishment, ownership and management along co-operative lines of various retail grocery establishments and stores at different points in the State of Michigan, on the basis outlined in said trust agreement, with full power and authority in relation thereto, as in said trust agreement provided and expressed.

ARTICLE IV

The nature and value of the trust property is the sum of Ten Thousand ($10,000.00) Dollars, of which Ten Thousand ($10,000.00) Dollars is in cash deposited in the City National Bank, at Battle Creek, Michigan.

ARTICLE V

The persons who shall constitute the present board of

trustees of such trustee corporation are three (3) in number, and as follows:

Harrison M. Parker, 220 E. Walton Place, Chicago, Ill.;
John Coe, 3857 Lake Park Avenue, Chicago, Ill.; and
Vigge E. Bird, New London, Conn.,

who shall hold their respective offices as trustees until successors are duly nominated and appointed.

ARTICLE VI

In the event of a vacancy existing in any such office of trustee, as aforesaid, such vacancy shall be filled by appointment in the manner prescribed by said trust agreement.

ARTICLE VII

The trustees may increase the corpus of the trust estate to the amount of One Million ($1,000,000.00) Dollars by accepting real and personal property, rights, credits and cash from individual subscribers to co-operative beneficial interests not exceeding twenty (20) interests to any one co-operator person, which further contributions of property, cash, rights and credits whether or not the same may be immediately invested in the purchase of property, or whether used to purchase and invest in property of a permanent nature or in fluctuating property, such as stocks-in-trade, or whether used in the payment of incumbrances or other debts or to expand the business thereof, shall be taken and held to be an increase in and addition to the corpus of the trust estate and be divided into aliquot parts or interests of the par value of Fifty ($50.00) Dollars each to the extent of such increase, and to the amount thereof the trustees may immediately issue to the subscriber therefor in cash, property or services, certificates representing the beneficial interests at par to the amount of the fair

value of such increase, having in view the accretion by good will to the whole trust estate, and by the methods so provided the trustees may increase the corpus, and the issuance and disposition of beneficial interests to any amount to which the corpus of the trust estate may be increased in units of Ten Thousand ($10,000.00) Dollars, and no person or persons other than the trustees shall become members in the trustee corporation beyond the holding of certificates of beneficial interests as herein designated, and in the manner and to the extent, effect and purposes specified in the trust agreement.

ARTICLE VIII

Operations are to be conducted by the trustee corporation at such place or places within the State of Michigan as they may from time to time determine.

The postoffice of its main business in Michigan is REAL ESTATE EXCHANGE BLDG., DETROIT, MICHIGAN.

ARTICLE IX

The trust estate is divided into units of Ten Thousand ($10,000.00) Dollars each, each unit being divided into two hundred (200) beneficial interests of a par value of Fifty ($50.00) Dollars per interest, the same to be disposed of in the subscriptions of the beneficiaries, co-operators and contributors to the estate, and otherwise than the certificates representing beneficial interests of the par value of Fifty ($50.00) Dollars per interest there are no shares in the nature of common or preferred stock in said trustee corporation.

ARTICLE X

The subscriber to the trust estate pledges himself to trade at co-operative stores, and thereby contribute his buying power.

ARTICLE XI

The names and addresses of the Trustees in the trustee corporation herein designated are as follows:

NAME	OFFICE	ADDRESS
Harrison Parker,	130 N. Wells St., Chicago.	220 E. Walton Pl., Chicago.
John Coe,	130 N. Wells St., Chicago.	3857 Lake Park Av. Chicago.
Viggo E. Bird,	130 N. Wells St., Chicago.	New London, Conn.

IN WITNESS WHEREOF, We, the parties designated, as provided by law, by the parties associating as shown under Article V of these articles, for the purpose of giving legal effect to these articles, hereunto sign our names this 12th day of May, A. D. 1921.

(Signed) HARRISON PARKER,
JOHN COE.

STATE OF ILLINOIS }
County of Cook... } ss.

On this 12th day of May, A. D. 1921, before me a notary public in and for said county, personally appeared Harrison Parker and John Coe, known to me to be the persons named in and who executed the foregoing instrument and severally acknowledged that they executed the same freely and for the intents and purposes therein mentioned.

PHOEBE M. WINKELMAN.

My commission expires Nov. 14, 1922.

APPENDICES

APPENDIX A

THE MICHIGAN CORPORATION CODE

(Act No. 84 of Public Acts 1821 as amended)

APPENDIX B

THE MANUFACTURING AND MERCANTILE ACT

(Act No. 232 of P. A. 1903 as amended)

APPENDIX C

OPINIONS OF THE ATTORNEY GENERAL

(Relating to Acts No. 84 and No. 85 of P. A. 1921)

APPENDIX A

TEXT OF

THE MICHIGAN CORPORATION CODE

ACT No. 84 PUBLIC ACTS 1921

As Amended by P. A. '21, First Extra Session,

Act No. 20.

Note: The Act is here reproduced, with marginal subject lines, solely as a matter of convenience. The annotator's section numbers are added, by means of which the notes may be readily found by turning to the corresponding section of the book.

[No. 84.]

TITLE

AN ACT to provide for the organization, regulation and classification of domestic corporations; to prescribe their rights, powers, privileges and immunities; to prescribe the conditions upon which corporations may exercise their franchises; to provide for the inclusion of certain existing corporations within the provisions of this act; to prescribe the terms and conditions upon which foreign corporations may be admitted to carry on business within this state; to prescribe penalties for violations of the provision of this act; and to repeal certain acts and parts of acts relating to corporations.

Title.

See §1.

Ante §§1, 2, 3, 63.

The People of the State of Michigan enact:

PART I

FORMATION OF CORPORATIONS

CHAPTER I

CLASSIFICATION AND PURPOSES

(*References are to annotator's sections*)

Incorporators profit companies. See §4.

SECTION 1. Any number of persons, not less than three, may incorporate for the purpose of carrying on any lawful business for pecuniary gain. Such corporations shall be known as "Corporations for pecuniary profit."

Ante §§5, 6, 64, 78.

Incorporators non-profit companies. See §9.

SEC. 2. Any number of persons, not less than three, may incorporate for the purpose of carrying out the terms of any written declaration, deed or pecuniary gain or profit for its members or associates. Such corporations shall be known in law as "non-profit corporations."

Ante §§9, 10, 11, 64, 397.

Trustee corporations. See §12.

SEC. 3. Corporations may be formed to carry out the terms of any written declaration, deed or testament making donations, grants, gifts or devises in trust for specific lawful purposes. Such corporations shall be known in law as "trustee corporations," which term may also embrace other corporations as hereinafter provided for in this act.

Ante §§12, 13, 14, 15, 16, 17, 64, 451.

Educational corporations. See §18.

SEC. 4. Any number of persons, not less than three, may incorporate for the purpose of conducting a school, academy, college or other institution of learning, where preparatory subjects or the arts, sciences, professions, special occupations and higher learning may be taught. All such corporations shall be known in law as "educational corporations." Nothing herein shall be construed as preventing any

such corporation from being deemed a corporation for pecuniary profit or a trustee corporation in appropriate cases: *Provided,* That every such corporation shall comply with the provisions of this act made applicable to educational corporations in addition to complying with such provisions of this act as apply to corporations for pecuniary profit or trustee corporations or both as the case may be.

Ante §§18, 19, 20, 21, 64, 489.

Ecclesiastical corporations. See §22.

SEC. 5. Any number of persons, not less than three, may incorporate for the purpose of establishing a church organization to be composed in each case of persons subscribing in common to particular creeds or religious beliefs and the teaching and spreading of their religious beliefs and principles. All such corporations shall be known in law as "ecclesiastical corporations."

Ante §§22, 23, 506, 507.

Secret societies. See §24.

SEC. 6. Any number of persons, not less than three, may become incorporated for the purpose of forming a secret society or lodge, for benevolent, charitable, social, educational or mutual aid purposes or for any other similar purpose or purposes not prohibited by law.

Ante §§24, 25, 426.

Act exclusive. See §26.

SEC. 7. No corporation shall hereafter be formed in this state under any law in existence prior to the passage of this act, excepting corporations formed for a purpose expressly excluded or otherwise exempted from the provisions hereof. The articles of incorporation shall in every case declare under which of the foregoing sections of this chapter such corporation intends to proceed, and no such articles shall be filed by the Secretary of State unless such declaration is contained therein. A declaration to proceed under sections two, five or six of this chapter shall be deemed incompatible with a declaration to proceed under section one hereof, and any articles of incorporation containing incompatible declarations under this section shall be rejected by the Secretary of State.

Election of sections.

Incompatible declarations.

Ante §§27, 28, 29, 102, 103.

Excluded corporations. See §30.

SEC. 8. The provisions of this act shall not be construed to apply to banking corporations, industrial banks, insurance corporations, fraternal benefit societies, trust, deposit, and security companies, building and loan associations, summer resort associations, limited partnership associations, corporations organized or to be organized under chapters one hundred fifty-seven, one hundred sixty, one hundred sixty-one, one hundred sixty-two, one hundred sixty-three, one hundred sixty-eight, or one hundred sixty-nine of the Compiled Laws of nineteen hundred fifteen, safety and collateral deposit companies, canal, river and harbor improvement companies, cemetery, burial and cremation associations, agricultural and horticultural fair societies, pipe line companies, or to water power and water supplying companies, excepting as any specific provision in this act may be made to expressly apply to any of the said classes of corporations.

As amended by P. A. '21, First Extra Session, Act No. 20.

Ante §§30 to 48.

Saving clause. See §49.

SEC. 9. Nothing in this act contained shall be construed to limit or restrict the provisions of act number forty-six of the Public Acts of nineteen hundred fifteen, known as the "securities act," nor act number one hundred three of the Public Acts of nineteen hundred thirteen, known as the "uniform stock transfer act," nor act number three hundred fourteen of the Public Acts of nineteen hundred fifteen, known as the "judicature act."

Ante §§49, 50.

Published notice. See §51.

SEC. 10. Definitions and Rules of Interpretation. Whenever in this act any notice is required to be inserted in a newspaper published in the county seat or in the township, village or city where the corporation concerned has its office or its principal place of business, and there shall be no such newspaper published therein, then such notice may be inserted in any newspaper having general circulation in such county, or otherwise shall be inserted in some newspaper published in an adjoining county.

Definitions.

The term "articles" as used throughout this act shall be construed to mean "articles of incorporation" or "articles of association" which terms shall themselves be construed to be synonymous. The term "directors" shall be deemed to be synonymous with the term "trustees" as applied to the governing body of a corporation. The terms "company," "association" and "society," shall be deemed to be synonymous to the term "corporation." The term "officer" of a corporation shall be construed to mean an executive officer, and shall not include the directors or trustees excepting as individual directors or trustees shall also be executive officers of such corporation. The term "capital stock" shall be construed as meaning capital stock as provided for in the articles or amendments thereto, and shall not include surplus funds or undivided profits. The terms "main business office," "principal business office," and "principal place of business," shall be deemed to mean the place designated in the articles as the main business office in Michigan. The titles to parts, chapters, and subdivisions throughout this act shall not be construed as limiting the provisions thereunder to the subject matter stated in such headings. Should any part, chapter, subdivision, or section in this act be held to be invalid for any reason, such invalidity shall not be held to impair or invalidate the remainder of such part, chapter, subdivision or the act as an entirety, it being the legislative intent that every section, subdivision, chapter or part hereof shall stand, notwithstanding the invalidity of any particular provision or provisions.

Construction.

Ante §§51 to 63.

CHAPTER 2

MODE OF INCORPORATING AND REQUISITES TO INCORPORATION

Articles. See §64.

SECTION 1. With the exception of ecclesiastical corporations provided for in chapter three, part three hereof, the articles of incorporation shall in all

cases be made on suitable and uniform blanks signed by the persons associating in the first instance and acknowledged before a notary public, and shall state:

Name. First, The name assumed and by which the corporation shall be known in law;

Class Second, The section or sections under chapter one, part one hereof, under which the corporation is classified;

Ante §§64 to 71.

Purpose. Third, The purpose or purposes for which the corporation is formed;

Place. Fourth, The principal place or places at which its operations are to be conducted, and the postoffice address of its main business office in Michigan, and also the place where its main business office without the State of Michigan (if any) is located;

Ante §§72 to 77.

Fifth, (A) If a corporation for pecuniary profit—

Capital stock. (a) The amount of total authorized capital stock; the amount of capital stock subscribed, and the classes of stock authorized, with the number, nominal or par value and conditions of each class of such shares; (and the number of shares, if any, of stock of non-par value and other statements respecting such issue as required by chapter two, part two hereof;)

Ante §§78 to 84.

(b) The amount of actual capital, in cash or property or both, which such corporation owned and possessed at the time of executing the articles, and a sworn statement as to such property's cash value, and the amount of stock issued or to be issued in payment for the same;

(B) If any other than a corporation for pecuniary profit—

Assets. (a) The amount of assets classified as to real and personal property which such corporation possesses;

Finance. (b) The terms of any general scheme of financing such corporation;

Ante §§85 to 87.

Sixth, The term of years the corporation is to exist; Term

Stockholders.

Seventh, (a) The names of the stockholders, in stock corporations, their respective residences, and the number of shares subscribed for by each;

Ante §§88 to 92.

(b) The names of the incorporating members, in non-stock corporations, and their respective residences; Incorporators.

Eighth, The names and addresses of the officers and directors chosen by the incorporators to act for the corporation for the first year; or, in case no such officers have been elected, then the name and address of the representative or attorney-in-fact authorized to act for such incorporators, as provided for in section seven of this chapter. Officers.

Ante §§93, 94.

Ninth, Any special statement or statements permitted or required by this act in relation to the primary organization of any particular class of corporation, not included in the foregoing requirements: *Provided,* That in any case where there are more than three incorporators, either upon the formation, merger, consolidation or renewal of a corporation, or more than three stockholders or subscribers, the subscribers or stockholders or incorporators, as the case may be, may, by suitable resolution adopted at the organization meeting, designate any three among themselves to sign and acknowledge the articles for themselves and for the remainder of such incorporators, subscribers or stockholders, in which case a copy of the resolution, duly certified by the person acting as secretary of such meeting, shall accompany the articles. Special statements.

Delegation, authority to.

Ante §§95 to 100, also 64 and 116.

SEC. 2. Such articles in triplicate, shall be sent to the office of the Secretary of State where the original, after approval, shall be filed. The two remaining sets shall be returned to the incorporators or their representative, certified by the Secretary of Filing articles.

See §101.

State as being true copies of the original on file. No such articles shall be approved for filing by the Secretary of State unless and until they comply with this act. The filing, franchise and certificate fees required by law shall in all cases accompany the articles. One of the certified copies so returned to the incorporators shall be filed in the office of the county clerk of the county in which such corporation maintains its principal business office. Upon such filing in the office of the Secretary of State the company or association shall be deemed a body corporate within the meaning of the laws of this State, and the Secretary of State shall thereupon issue his written authority to such corporation to commence its business: *Provided, however,* That no contract made by the incorporators preliminary to the filing of such articles shall be deemed to be invalid or ineffectual because made prior to such filing, and all property held by such incorporators for the benefit of the proposed corporation shall be deemed to be the property of such corporation for the purpose of complying with section one of this chapter. The Secretary of State and the several county clerks receiving such articles for filing, shall each certify upon every such articles and upon all amendments filed by them, the time when they were received and filed.

Authority to commence business.

Preliminary contracts.

Ante §§101 to 110.

Name.

See §111.

SEC. 3. No corporation shall assume any name already in use by any other existing corporation of this state, or corporation lawfully carrying on business in this state, or so nearly similar thereto as to lead to confusion or deception: *Provided, however,* That in the case of a foreign corporation applying for admission to this State whose name is similar to another foreign corporation already admitted into this state, but each having respectively the name of a different locality as a part of its corporate name, such names so distinguished shall not be deemed sufficiently similar as to lead to confusion or deception: And *provided further,* That no corporation organized under or subject to the provisions of this act shall assume any name which implies that it is a

banking corporation, an insurance or surety company or a trust company, and no such corporation shall use the words "bank," "deposit," "insurance," "surety," "security," "trust," or "guaranty," or "building and loan," in its corporate name, but this proviso shall not be construed as applying to the name of any corporation adopted prior to August twelfth, nineteen hundred seventeen.

Ante §§111 to 115, also 68, 69, 70, 71, 437.

Special provisions in articles.

See §116.

SEC. 4. The articles may also contain any lawful provision which the incorporators may deem advantageous for the regulation of the business of the corporation, and any provision creating, defining, limiting and regulating the powers of the corporation, and of the directors, and the rights and privileges of the stockholders or any class or classes of stock and stockholders, including provisions for the better security of preferred stockholders, for the creating of a sinking fund for retirement of preferred stock, and prescribing and limiting the rights of any class or classes of stockholders to subscribe for increases of stock.

Ante §§64, 95 to 100.

Business office.

See §117.

SEC. 5. (a) Every corporation shall maintain an office in this state and some person or persons in charge of such office, but it shall be lawful for any such corporation to conduct its business in whole or in part at any place or places within the United States or its possessions or any foreign country, excepting as may be hereinafter otherwise provided; and every corporation may, in its articles of association, or by its by-laws, establish and maintain a principal business office without this state, at which meetings of stockholders or directors may be held as provided by the by-laws;

Ante §§117 to 120.

Term.

(b) The term of existence of every corporation shall be not more than thirty years, or such other period as may be fixed by the constitution of this state. Corporations organized without capital stock

for religious, benevolent, social or fraternal purposes, may incorporate without fixing any definite term in their articles, and the terms of such corporations shall be deemed to be perpetual, subject to the right of the legislature to alter, repeal or amend this section in accordance with the constitution.

Ante §§121, 122, also 89 to 91 and 161, 162.

Provisional officers. See §123.

SEC. 6. The incorporators in the first instance may elect such provisional officers and directors as they shall agree upon by majority vote; and in such case such provisional officers shall have the necessary authority to act for the incorporators in all matters relating to complying with this chapter as to filing the articles; and upon accomplishing the legal incorporation, they shall have such further powers, duties and responsibilities as devolve upon such officers and directors by law or under the charter and by-laws of the corporation, and until their successors are elected and qualify, as hereinafter provided for.

Attorney.

If no such provisional officers be elected, the articles of association shall so state, and in such case the incorporators shall name one of themselves, or an attorney-in-fact, to represent them in filing the articles and to call the first meeting of the stockholders or members for the further organization of such corporation, which meeting shall be held not more than sixty days from such filing. Failure to hold such meeting shall work a forfeiture of all corporate rights of such corporation, unless the Secretary of State shall grant an extension of time for such purpose which shall in no instance exceed an additional thirty days.

Ante §§123 to 126 and 93, 94.

Forms. See §127.

SEC. 7. It shall be the duty of the Secretary of State to prepare various forms suitable and convenient for executing and filing articles of the principal classes of corporations authorized to be incorporated under this act; and further forms for amendments to the same, and for all reports required to be made by such corporations to the Secretary of

State or the county clerks. Such forms may be obtained from the Secretary of State upon application therefor, at such price as may be fixed by the Board of State Auditors. Forms—Continued.

Ante §§127, 128.

CHAPTER 3

SALE OF ENTIRE CORPORATE PROPERTY, MERGERS, CONSOLIDATIONS, ETC.

Subdivision 1.—Right to Sell Entire Property

SECTION 1. Subject to the laws of this state and of the United States with respect to monoplies and illegal restraints of trade, any corporation may, at any general or special meeting of its stockholders, with the consent of three-fourths of its capital stock, sell and convey all its property to any other corporation formed under the same or any similar law for corporate purposes of the same character. Notice of such sale shall be filed with the Secretary of State within thirty days thereafter, and such corporation shall thereupon be deemed to have surrendered its corporate rights, and shall transact no further business excepting such as may be necessary to wind up its corporate affairs. Sale entire assets. See §129.

Ante §§129 to 134.

Subdivision 2.—Consolidations, etc.

SEC. 2. Subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade, any two or more corporations, organized under this or any general law of this state, may, by a vote of three-fourths of the legally issued capital stock of each of said corporations, at any meeting of stockholders duly called to consider the question of such consolidations, notice of which meeting shall be sent by registered mail, postage prepaid, to each stockholder at least thirty days previous to said meeting, agree Consolidation. See §135.

to unite and consolidate the said corporations. At such meeting the terms upon which the consolidation shall be effected, the valuation of the several properties, and the number of shares of stock in the consolidated corporation to which the stockholders in each of the constituent corporations may be entitled, shall be determined, and spread at length upon the records of each of the constituent corporations.

Ante §§135 to 137.

Stock consolidated company.

See §138.

SEC. 3. The capital stock and the number of shares in the consolidated corporation may be the same as the aggregate capital stock and number of shares of the several corporations before such consolidation, and such consolidated corporation may call in the unpaid subscriptions on any of the outstanding capital stock of such consolidating corporations; but nothing in this subdivision contained shall be construed as preventing the consolidated corporation from capitalizing upon the basis of the actual value of its aggregate assets or from creating any class or classes of shares that may be agreed upon in such consolidation to the same extent as is permitted in this act to other corporations.

Ante §§138, 139.

Articles.

See §140.

SEC. 4. The consolidated corporation shall file its articles upon the completion of such reorganization in the same manner and with the same officials as is required by this act of other corporations.

Consolidation agreements.

Each of the consolidating corporations shall, by its president and secretary, file with the Secretary of State and the appropriate county clerk where its original articles were recorded, a certificate setting forth the text of the agreement of such consolidation, whereupon, excepting for such purposes as are hereinafter provided for, the corporate existence of each of such consolidating corporations shall be deemed to have ceased.

Ante §140.

Powers.

See §141.

SEC. 5. The consolidated corporation so formed shall hold and enjoy all the powers, privileges, rights, franchises, properties, claims, demands and

estates, which at the time of such union may be held and enjoyed by either of the said constituent corporations and be subject to all the dues, demands, contracts, and liabilities existing against either of the same; and all suits at law or in equity, and all proceedings which may be pending, to which either corporation shall be a party, may be prosecuted and defended by the consolidated corporation in the same name, in like manner, and with the same effect as might have been done had such union not have been formed. All claims, contracts, rights, and causes of action of or against either of such constituent corporations, at law or in equity, may be enforced by suit or action, to be commenced and prosecuted by or against the consolidated corporation, and the said constituent corporations shall continue as corporations for the purpose of prosecuting and defending any suits or proceedings pending at the time of such consolidation.

Liabilities.

Ante §§141 to 142.

SEC. 6. The officers of the constituent corporations shall continue to exercise, in behalf of the corporation so to be formed, all their rights and powers, until the consolidated corporation shall be organized; and thereafter each of the said constituent corporations shall continue, for the purpose of perfecting the said union, and of doing all such acts and things as may be necessary therefor; and shall execute all such transfers, conveyances and assignments, as the consolidated corporation may deem necessary or expedient to vest itself of any property, estates, contracts, rights, or claims which do not vest in it by operation of law.

Powers of officers.
See §143.

Ante §§143, 144.

SEC. 7. Any corporation formed by consolidation under this subdivision shall have power to call in and cancel the certificates of stock of the several corporations so consolidating, and to make and issue to its stockholders new certificates of stock in the consolidated corporation, in such proportions to each as each shall be entitled to, according to the terms

Calling in certificates.
See §145.

Cancellation of Stock.

of consolidation as agreed upon, and to cancel the stock of any stockholder who shall not return his stock to be cancelled, as aforesaid, within thirty days after actual notice of the resolution of the corporation for calling in such stock, or who shall not return his stock after publication of notice of said resolution once in each week for four successive weeks in some daily paper published in the county where the principal business office of the company is located: *Provided,* That in every case where stock is so cancelled without return of stock for cancellation, it shall be the duty of the treasurer of such consolidated corporation to forthwith deposit with the Secretary of State the equivalent certificates of stock in such consolidated corporation properly executed, and ready for delivery upon the demand of such person or persons whose original stock was so cancelled.

Ante §§145, 146.

Subdivision 3.—Subsidiary Corporations

Power to hold shares

See §147.

SEC. 8. Subject to the limitations of the laws of this state and of the United States with respect to monopolies and illegal restraints of trade, any corporation organized for pecuniary profit shall have power, in furtherance of the objects of its existence, to purchase and hold shares of stock of other corporations organized under the laws of this or any other state for purposes similar to those of such corporation.

Ante §§147 to 149.

Representation.

See §150.

SEC. 9. When any such corporation shall be a stockholder in any other corporation, as in this subdivision provided, its president and other officers or any of its directors shall be eligible to the office of director of such corporation, the same as if they were individually stockholders therein, and the corporation holding such stock shall possess and exercise in respect thereof, all the rights, powers, privileges and liabilities of individual owners or holders of such stock.

Ante §§150, 151.

CHAPTER 4

EXTENSION OF CORPORATION TERMS AND VOLUNTARY DISSOLUTIONS

Subdivision 1—Extension of Corporate Life and Change of Attitude

Extension of term of stock company.
See §152.

SECTION 1. Any stock corporation whose term is about to expire by limitation, may, at any time within two years next preceding the expiration of such term, by the consent of at least two-thirds of its capital stock at any annual meeting or at any special meeting of its stockholders called for that purpose, direct the continuance of its corporate existence for such further term, not exceeding thirty years from the expiration of its former term, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution it shall be the duty of the president and secretary to make, sign and acknowledge in triplicate, new articles to which shall be appended a copy of the proceedings of such stockholders' meeting, certified by the secretary and verified by his oath, which articles shall be filed where original articles are required to be filed by this act.

Ante §§152, 153.

Renewal after expiration.
See §154.

SEC. 2. Any such stock corporation whose term has expired, but which has not been wound up or dissolved and which has nevertheless inadvertently continued its active business beyond such term, may, with the consent of at least four-fifths of its capital stock, renew its corporate existence in the same manner as is provided in this chapter in relation to a corporation whose term is about to expire, and it shall be the duty of the officers and directors de facto, to do and perform all things required of such officers and directors de jure as provided in this subdivision, in relating to calling a special meeting of the stockholders and submitting the question to them of renewing the corporate existence, and the filing of renewed articles. But no such corporation de facto

Limitation.

shall be permitted to renew its corporate life unless such action is taken within three years next after its term has expired, and such renewal shall in no wise relieve such corporation from any penalties that may have accrued against it under any law of this state, but such renewal shall entitle the corporation to all the rights, privileges, immunities and powers conferred upon corporations renewing their corporate existence before or at the expiration of their term.

Ante §§154 to 157.

Renewal non-stock corporation.

See §158.

SEC. 3. Any corporation without capital stock, incorporated under this or any other law of this state whose term of existence has expired or is about to expire, may renew such corporate existence at any meeting of the members of such corporation called for that purpose, notice of which shall have been given in the same manner and published for the same length of time as is required in this act in the case of amendments to the articles of such corporations. In case the corporate existence has not yet expired, such meeting may be held at any time within two years next preceding such date of expiration, and in case such existence has expired, such meeting shall be held within two years next following such date of expiration. No such corporate life shall be renewed excepting by the affirmative vote of two-thirds of the members present at such meeting. The articles shall thereupon be renewed and filed as provided in section one of this chapter.

Ante §§158 to 160.

Perpetual charters.

See §161.

SEC. 4. The corporate existence of all corporations, heretofore incorporated or incorporating under this act without capital stock, for religious, benevolent, social or fraternal purposes, shall be deemed to be in perpetuity, notwithstanding any limitation or term fixed in the articles or in the law under which such corporation originally incorporated, and it shall not hereafter be necessary for any such corporation to formally renew its corporate existence, but every such corporation shall be deemed to have perpetual succession unless it shall, in any particular case, after the passage of this act,

affirmatively waive the right to perpetual existence, and shall fix a definite term in its articles.

Ante §§161, 162.

Identity after renewal

See §163.

SEC. 5. Any corporation which has thus been renewed shall be the same corporation, shall hold and own all the rights, franchises and property held and owned by the corporation before renewal, be subject to all its liabilities, and have the same stockholders, members and officers.

Ante §§163, 164.

Three year extension.

See §165.

SEC. 6. All corporations whose charters shall expire by their own limitation, or shall be annulled by forfeiture or otherwise, shall nevertheless continue to be bodies corporate, for the further term of three years, for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle and close their affairs, to dispose and convey their property, and to divide their capital stock; but not for the purpose of continuing the business for which such corporations were organized.

Ante §§165, 166.

Filing notice

See §167.

SEC. 7. In any case where a corporation shall be dissolved by process of law, or whose term of existence shall terminate by limitation and not be renewed, or whose property and franchise shall be sold at mortgage sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles without a formal dissolution, it shall be the duty of the last board of directors thereof within thirty days thereafter to file a certificate to such effect with the Secretary of State signed by a majority of the remaining members of such board and accompanied with the fee prescribed, which certificate shall be filed or recorded along with the original articles. In case of neglect or refusal to file such certificate as aforesaid, each of said directors shall be subject to a penalty of five dollars for each and every day during the continuance of such neglect or refusal to be collected in an action brought therefor by the Attorney General.

Change of attitude.

Penalty.

Ante §§167 to 169.

Subdivision 2.—Winding up Corporate Affairs—Voluntary

Voluntary dissolution.
See §170.

SEC. 8. In addition to the methods provided in the judicature act, so-called, for winding up, dissolving or otherwise terminating the corporate existence of any corporation of this state, any solvent corporation, the stockholders or members of which shall desire to cease doing business, surrender their franchise and wind up their corporate affairs, may do so by the following procedure: Notice of such intention shall be published in the call for the meeting of the stockholders or members, whether a regular or special meeting, and at such meeting the question of winding up, dissolving and terminating the existence of such corporation shall be submitted to such stockholders or members in a resolution. The adoption of such resolution shall require an affirmative vote of two-thirds of the capital stock or of two-thirds of the members in non-stock corporations. Upon the adoption of such resolution, the stockholders or members may appoint three or more of the directors or trustees to make an audit of the books, accounts and papers, and to make an inventory and appraisal of the property of such corporation, which audit and inventory shall be filed with the board. Upon receiving such audit and inventory, the board shall proceed to liquidate all of the debts and obligations of the corporation, and to sell the property, rights, franchises, to collect all claims due the corporation, and reduce all of such assets to possession.

Notice.

Resolution to dissolve.

Audit and liquidation.

Ante §§170 to 176.

Notice of approaching dissolution.
See §177.

SEC. 9. It shall be the duty of such board to cause a public notice of such approaching dissolution to be inserted once each week for three successive weeks in some newspaper published in the city or villiage where such corporation has its principal place of business, calling the attention of all creditors to the same, and requesting such creditors to present their claims at the office of such corporation on or before a date to be fixed in such notice.

It shall also be the duty of such board to notify each known creditor by registered mail of such intention to dissolve.

Ante §§177 to 178.

Claims.
See §179.

SEC. 10. The board shall have full power and authority to settle, compromise and pay all claims against the corporation, and to receive, receipt and give acquittance for all debts due the corporation, and to authorize the officers thereof to execute and deliver such deeds or instruments as may be necessary in the sale of conveyance of any of the real or personal property of such corporation.

Ante §§179 to 181.

Report to stockholders.
See §182.

SEC. 11. As soon as may be convenient after the property has been sold, all assets reduced to cash and all debts paid, the directors shall call a final meeting of the stockholders or members of such corporation, and shall present at such meeting a detailed financial statement showing the exact surplus to be distributed among the stockholders or members. Such statement shall be subject to such audits as the stockholders or members present may direct, and such stockholders or members may then proceed to order the distribution of such surplus as the respective interests may appear. It shall be the duty of the treasurer or other person having custody of the moneys of such corporation to make such distribution and to take charge of the records, receipts and accounts of such corporation and to have the same in safekeeping; or upon the direction of such stockholders or members such records may be deposited for safekeeping with any bank or trust company within this state. The books and records of such corporation shall not be destroyed by the custodian thereof within ten years next after the filing of notice of dissolution as hereinafter provided for. The expense of such custody shall be paid for in advance before the final distribution of the surplus is accomplished.

Distribution.

Preservation books and records.

Ante §§182 to 186.

Filing report of liquidation.
See §187.

SEC. 12. It shall be the duty of the president and secretary of such corporation to execute and file with the Secretary of State a certificate reciting the resolution to dissolve, a copy of the final statement, and the sworn statement of the treasurer of such corporation that all of the debts of such corporation have been paid and the surplus distributed to the stockholders and members, and giving the name and address of the custodian of the records of such corporation. The Secretary of State shall have access to all of such corporation's records, wherever lodged, at any time within ten years next after such dissolution, and any person or corporation having custody of such records, who refuses to produce the same on demand of such Secretary of State, shall be deemed guilty of a misdemeanor; and such Secretary of State may enforce his right to have access to such books by the subpœna or warrant of any court of record in this state.

Penalty for refusal to produce records.

Ante §§187, 188.

When deemed dissolved.
See §189.

SEC. 13. Upon filing such final certificate, the said corporation shall be deemed to be dissolved, its franchise surrendered, and all of its powers, rights and privileges extinguished: *Provided, however,* That nothing in this subdivision contained shall be construed as taking away or prejudicing any right of creditors to pursue any remedy at law or in chancery given by any law of this state with respect to such corporation, its stockholders or members, within such period as may be prescribed in the statutes of limitations.

Creditors.

Ante §§189, 190.

PART II

CORPORATE MANAGEMENT, POWERS, FINANCES, ETC.

CHAPTER 1

CORPORATE POWERS AND MANAGEMENT

Powers.
See §191.

SECTION 1. Every corporation shall have power to have succession; to sue and be sued in any court of law or equity, or to be a party to any necessary proceedings before any board or commission of this or any other state or government, with the same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government and regulation of its affairs, and to alter and repeal the same; to elect all necessary offices and to appoint and employ such agents and employes as the business may require, and to fix the compensation in all cases. Every corporation shall possess and may exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted thereto.

Ante §§191 to 196.

Prosperity.
See §197.

SEC. 2. Every corporation shall have power, unless expressly prohibited by law, to purchase, hold and convey all such real and personal estate as the purposes of the corporation may require, and all other real and personal estate which shall have been, bona fide, conveyed or mortgaged to said corporation by way of security or in satisfaction of debts. Any stock corporation may issue its authorized capital stock in payment for any real estate or

Issue of stock for property.

personal property so purchased, to the amount of the value thereof, and the capital stock so issued shall be deemed full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment except the liability imposed by section ten of chapter three of part two hereof; and in the absence of actual fraud in the transaction the judgment of the directors of the corporation as to the value of the property shall be conclusive. Within ten days after any corporation shall issue any of its capital stock in payment for property it shall file a sworn schedule of such property with the Secretary of State similar to that required by section two of the next succeeding chapter hereof: *Provided, however,* That any corporation may issue part-paid stock in payment of property conveyed to it, in which case the articles, and any certificate or statement required by this act to be filed with the Secretary of State with reference to the value of the property so conveyed, shall clearly state the number of shares so issued and the amounts credited upon such shares as partial payments thereon, in addition to the other statements with respect to such property's cash value; and such shares, so issued, shall be subject to such further call for the balance due thereon, as may become necessary to the corporation or to its creditors as in other cases.

Report of issue of stock for property.

Stock part paid in property.

Ante §§197 to 202.

Powers of directors and trustees.

See §203.

SEC. 3. The stock, property and business affairs of every corporation shall be managed by not less than three directors, who shall be chosen by the stockholders or members, excepting in the case of trustee corporations where such trustees shall have been named in the trust instrument in which case the trustees named in such instrument shall be the trustee of such corporation and shall have such specific powers as shall have been granted in such instrument in addition to the general powers, duties and responsibilities prescribed in this act; and such elections shall be held and conducted at such time and place and in such manner as shall be provided by the by-laws of said corporation made pursuant to the

provisions of this act. All such directors shall be stockholders or members of said corporations and shall have such further qualifications as may be prescribed by law or by the articles or the by-laws of such corporations. The directors, excepting in such particular cases as are hereinafter provided for, shall hold office for one year, and until their successors shall be chosen in their stead. The directors of any corporation may require bonds of such of its officers or employes and in such amount as may be fixed and determined by such board.

Qualifications of directors.

Term.

Bonds of officers and employes.

Ante §§203 to 216.

SEC. 4. If an election of directors or trustees in any corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time to be fixed upon, notice whereof to be given by the directors: *Provided*, That in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors or trustees by giving the notice prescribed in section twelve of this chapter.

Special election meeting.

See §217.

Ante §§217, 218.

SEC. 5. Unless otherwise prescribed in the articles, the directors shall elect one of their number to be president or chairman of the corporation and board, and one or more of their number to be vice-president or vice-chairman, and shall also choose a secretary and a treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside at the place where the corporation transacts its business within this state, unless the articles provide for the location of the principal office without this state. The directors shall appoint such other officers and agents as the articles or the by-laws of the corporation shall prescribe. If the stockholders so direct, the same person may hold any two offices excepting those of president and vice-president. Unless otherwise prescribed in the articles, the directors shall have authority to enact and enforce the by-laws of

Officers.

See §219.

Residence secretary and treasurer.

Directors' by-laws.

Executive committee.

the corporation, and such directors, if more than five in number, may appoint an executive committee of such board, to have the active management of the business affairs of such corporation in the interim between full board meetings, subject to such restrictions and limitations as the board may impose upon such executive committee.

Ante §§219 to 227.

Quorum. See §228.

SEC. 6. A majority of the directors of every corporation convened according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of stock, or a majority of the members of a non-stock corporation, shall be capable of transacting the business of a stockholders' or members' meeting, except as herein otherwise provided; and at all such meetings of stockholders each share shall be entitled to one vote, and at all meetings of non-stock corporations each member shall be entitled to one vote, unless otherwise provided in the articles. Excepting as hereinafter otherwise provided, stockholders and members of non-stock corporations may appear and vote in person or by proxy duly made and filed, under such rules and regulations as may be provided in the by-laws. Any non-stock corporation may declare in its articles or by-laws what number of members less than a majority of all the membership present at a regularly called meeting, may transact the business of such meeting.

One share one vote.

Voting in non-stock corporations.

Quorum non-stock corporations.

Ante §§228 to 235.

Vacancies. See §236.

SEC. 7. The directors shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, and such appointees shall hold office until their successors are appointed at the next succeeding election. Vacancies in the trustees of any trustee corporation shall be filled as hereinafter provided.

Ante §§236 to 239.

Cumulative voting. See §240.

SEC. 8. In all elections for directors of stock corporations, including corporations under the juris-

diction of the Michigan Public Utilities Commission, every stockholder holding voting stock shall have the right to vote in person or by proxy the number of shares of stock owned by him for as many persons as there may be directors to be elected, or to cumulate said shares and give one candidate as many votes as will equal the number of directors multiplied by the number of shares of his stock; or to distribute them on the same principle among as many candidates as he shall think fit. All such corporations shall elect their directors annually, and the entire number of directors shall be balloted for at one and the same time and not separately: *Provided,* That the articles and by-laws of any such corporation shall not be so amended as to reduce the number of directors of such corporation in case the votes of a sufficient number of shares are recorded against such proposed amendment, which if cumulatively voted as herein provided would elect one or more directors, where the same number of shares if cumulatively voted would not be sufficient to elect the same number of directors of the reduced board: *Provided further,* That any non-profit or co-operative corporation may elect its directors for a longer term than one year as hereinafter provided.

Annual election.

Ante §§240 to 243.

SEC. 9. Every corporation may at any annual meeting or at any special meeting called for that purpose, by a resolution adopted by a vote of a majority in interest of its outstanding capital stock, or by a majority vote of the members in non-stock corporations, amend its articles, including a change in name and location of its principal office, and as to any other matter for which a different vote is not required by law. Any corporation, for pecuniary profit, formed under any law of this state, may, unless prohibited by law, amend its articles to provide for the enlarging of its corporate purposes to include the carrying on of any other lawful business or businesses in connection with its original purpose. Such amendment shall become operative when a certificate containing the resolution and amendment, signed by the president and secretary of the corpo-

Term in non-stock companies.

See §244.

Amendment of articles.

ration, has been filed as is provided herein for the filing of original articles.

Ante §§244 to 247.

Removal to another county.
See §248.

SEC. 10. In case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles a certificate that such corporation has thus removed, and said articles, together with said certificate, shall be left for filing immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove. Such corporation officers shall immediately upon such removal also cause a certificate thereof to be filed in the office of the Secretary of State, and also in the office of the county clerk of the county from which it removes.

Ante §§248, 249.

List of stockholders.
See §250.

SEC. 11. Every corporation formed under the laws of this state is hereby required to keep a correct list of all its stockholders who are residents of this state, together with a statement of the number of shares held by each stockholder, at their agency or office in this state, and if there be more than one, then at some one of such agencies or offices to be designated by the officers of such corporation. Such list of stockholders shall at all times be open to the inspection of the Secretary of State, or any state or local assessing officer for the purpose of obtaining copies thereof, or other information required in public business. The failure to keep such list of stockholders, together with statement of the number of shares of stock held by each, shall be deemed a misuser of the charter of such corporation. Any person holding stock in any such corporation may have the same transferred upon the books of such agency within this state, upon the same terms, conditions, and restrictions as is provided by law, or the dues of such corporation, for such transfer at the principal office of such corporation, wherever it may be situated. The books of every corporation containing its accounts shall be kept, and shall at all reasonable times be open in the city, village or town where such

Transfers of shares.

Inspection of books.

corporation is located or at the office of the treasurer of such corporation within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same in the said city, village or town or at said office; and as often as once in each year a true statement of the accounts of such corporation shall be made and exhibited to the stockholders.

Inspection of books — continued.

Ante §§250 to 256.

SEC. 12. The annual meeting of all corporations shall be held prior to June thirtieth in each year on such date as shall be fixed in the by-laws. Any corporation heretofore organized whose fiscal year ends in any month between the first day of July and the thirty-first day of December may continue to have its annual meeting within such period, but such exemption from the general provision herein made shall not relieve or excuse such corporation from making and preparing a report of its condition and fiscal standing, as required in chapter two, part five of this act. Special meetings of the stockholders or members of any such corporations may be held pursuant to the call of the directors at any time. At least three days' notice of any such meeting shall be given in such manner as the by-laws may prescribe. Meetings of the stockholders or members of such corporations shall be conducted in such manner as the by-laws may direct.

Date of annual meeting.
See §257.

Special meeting of stockholders.

Ante §§257 to 263.

CHAPTER 2

CAPITAL STOCK AND FINANCES

Subdivision 1.—Preferred and Common Stock

SECTION 1. Any stock corporation shall have power to create and issue certificates for such kinds of stock, viz.: General or common stock, and preferred stock with such preferences as it may deem

Limitation of preferred stock.
See §264

advisable, which preferred stock, if preferred as to principal, shall at no time exceed two-thirds of the authorized capital stock, and shall, if preferred as to principal, be redeemed by the corporation at par at a certain time to be fixed in the articles and to be expressed to the certificates therefor: *Provided,* That such corporation may, by a provision clearly expressed in its articles, and in the certificates therefor, reserve the right to redeem or retire at a premium any or all of such stock preferred as to principal prior to the time when the same must be redeemed as above provided, and upon reasonable notice to be given to the stockholder in a manner to be fixed by the by-laws. None of said preferred stock shall, however, be redeemed or retired at a premium unless at the time of such redemption or retirement the assets of the corporation taken at a fair valuation over and above all the indebtedness of the company, both matured and unmatured, are equal to the outstanding stock, both common and preferred, plus the premium proposed to be paid upon such redemption. Shares of stock, whether common or preferred, shall be of denomination of ten dollars or some multiple of ten dollars, or of twenty-five dollars; but not more than one hundred dollars, and unless otherwise described in the articles the value of such shares as therein stated shall be deemed to be the par value. The amount of total authorized stock shall not be less than one thousand dollars, and the amount of capital stock, which must be subscribed and paid in before it actually begins business, must be definitely stated in its articles.

Accelerated redemption.

Redemption not to impair capital.

Denomination of shares.

Minimum capital.

Ante §§264 to 276.

Amount to be paid in at time of organization.

See §277.

SEC. 2. The amount of capital stock of any stock corporation paid in at the time of executing the articles shall not be less than ten per cent of the subscribed capital, and in no case less than one thousand dollars, except in the case of a capitalization of two thousand dollars or under, when it shall be not less than twenty-five per cent thereof, and the amount so paid in shall not be reduced below such per cent of its capital. Such capital may be

paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in the absence of fraud: *Provided,* That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court of competent jurisdiction for satisfaction of any judgment or decree against such corporation. And, *provided further,* That there shall be made and attached to any such articles an affidavit by at least three of the incorporators, that they know the property described in such articles and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated.

Payment in cash or property.

Payment in property.

Affidavit of value.

Ante §§277 to 280.

SEC. 3. The preferred stock may be made convertible at the option of the holder into common stock or any other class of stock, bonds or other securities on terms clearly set forth in the articles and expressed in the certificates therefor. In case provision for such conversion is so made, such corporation shall at all times have on hand in its treasury sufficient shares of its common stock or such other stock as may be stipulated for, to carry such conversion into effect. In providing for the issuance of preferred stock, the corporation may further provide that such stock shall, in addition to the dividend fixed therein, also participate with the common stock, in such proportions as the stockholders may agree upon and provide for in the articles, in any dividends which the corporation may at any time declare after there shall be declared and paid upon the common stock for the then current year a rate equal to that paid upon the preferred stock.

Conversion of preferred stock into other securities.

See §281.

Extra participation by preferred shares.

Ante §§281, 282.

Immunity of preferred stock from liabilities.
See §283.

SEC. 4. In no event shall the holder of such preferred stock, preferred as to principal, be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Every corporation issuing preferred stock shall be controlled by a board of directors elected by such preferred and common stockholders voting according to their respective holdings, excepting when otherwise provided in the articles: *Provided always,* If at any time upon a fair valuation of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof or any dividend due on the preferred stock shall remain unpaid for sixty days, then holders of such preferred stock shall have an equal right with the common stock, share and share alike and notwithstanding any provision in the articles to the contrary, to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent, then, after the payment of all liabilities and debts, the remainder of the assets of said corporation shall be applied first in payment in full of all stock preferred as to principal and unpaid dividends due thereon, and the balance divided among the holders of the other classes of stock, as their interests may appear. The certificates of preferred stock having a preference as to principal shall state briefly the amount which the holders of each of such preferred shares shall be entitled to receive on account of principal from the surplus assets of the corporation in preference to the holders of other shares, and shall state briefly any other rights or preference given to the holders of such shares.

Voting rights of preferred stock.

Distribution on dissolution

Certificates to recite preferences.

Ante §§283 to 287.

Amendment creating preferred stock.
See §288.

SEC. 5. Every corporation organized or existing under the provisions of this act may by vote of two-thirds in interest of its capital stock amend its articles of association to provide for the issuance of preferred and common stock, in accordance with this chapter, in the manner provided by section nine of chapter one of this part.

Ante §§288, 289.

Subdivision 2.—Shares of Non-Par Value, Etc.

Non-par stock. See §290.

SEC. 6. Any stock corporation organized for pecuniary profit may provide in the articles for the issuance of shares of stock of such corporation, other than preferred stock having a preference as to principal, without any nominal or par value, as herein provided. In respect of such shares, the articles shall state:

Shares and classification.

(a) The total number of such shares that may be issued by the corporation, the classification thereof, and the basis of such classification, with the number of such shares authorized in each class;

Votes.

(b) The voting powers, if any, which each of such classes shall possess;

Participation.

(c) The order of priority in and the extent to which such shares shall be entitled to participate in dividends or assets of the corporation;

Shares subscribed.

(d) The total amount of such shares subscribed, and the consideration received for the same;

Value and selling price.

(e) The value placed upon each class of such shares, and at which they have been, or it is proposed they shall be, sold to the subscribers;

(f) Any other statements or declarations required by this act with respect to such issues.

No corporation shall, however, be authorized to issue shares of no par value excepting:

Limitations.

(a) In connection with other issues of its stock having a par value as prescribed in this act; and

(b) The value placed upon each share of such stock by the corporation for the purpose of sale to the subscribers shall be at least one dollar.

Ante §§290 to 292.

Statement of non-par shares. See §293.

SEC. 7. In any case other than in the articles in which the law requires to be stated in any annual or other report, or in any certificate or paper, the amount of capital authorized, issued, outstanding or with which the corporation will commence business, the par value of shares, or the amount of the subscriptions of the incorporators thereof, there shall be stated in respect of such nominal or non-par value shares, the number of such shares au-

thorized, issued, outstanding or with which the corporation will commence business that such shares are without par value, or the number of such shares subscribed for by the incorporators, as the case may be: *Provided, however,* That whenever such corporation shall have fixed the value of such shares for the purpose of sale or the payment of dividends thereon or for the exchange of other stock, or for any other purpose, the highest value so placed thereon within the period of one year shall be stated in lieu of the requirement as to the par value.

Value of non-par shares.

Ante §§293, 294.

SEC. 8. Each share of such stock without nominal or par value shall have such voting powers as may be determined upon by the corporation and shall be equal to every other share of such stock subject to the preference given to preferred stock if any authorized to be issued. Every stock certificate for such shares without nominal or par value shall have plainly written or printed upon its face the number of such shares which it represents and the number of such shares which the corporation is authorized to issue, and no such certificate shall express any nominal or par value of such shares.

Voting rights.

See §295.

Non-par stock.

Certificates, non-par stock.

Ante §295.

SEC. 9. Such corporation may issue and may sell its authorized non-par value shares from time to time, for such consideration as may be prescribed in the articles of incorporation, or for such consideration as shall be the fair market value of such shares, and, in the absence of fraud in the transaction, the judgment of the board of directors as to such value shall be conclusive as to creditors and stockholders; or, for such consideration as shall be consented to by the holders of two-thirds of each class of shares then outstanding, at a meeting called for that purpose in such manner as shall be prescribed in the by-laws. Any and all shares issued as permitted in this subdivision shall be

Selling price, non-par stock

See §296.

deemed fully paid and non-assessable and the holder of such shares shall not be liable to the corporation or to its creditors in respect thereto: *Provided,* That nothing in this subdivision contained shall be construed as relieving or exempting any such corporation or the holders of any such shares or any other person or persons from complying with the provisions of act number forty-six, Public Acts of nineteen hundred fifteen, known as the "securities act," and the Michigan Securities Commission may regulate the price at which any stock may be sold within the state of Michigan. Proviso.

Ante §§296 to 309.

Subdivision 3.—Increases and Decreases of Capital Stock and Calling in Subscriptions

Amendment increasing or decreasing capital stock See §310.

SEC. 10. The amount of the capital stock and number of shares of every corporation may be increased or diminished at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increases of capital shall be subscribed and paid for by the stockholders, but not less than par, excepting in the case of stock having no nominal or par value, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and cancelling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and the sec-

Certificate of amendment.

retary shall make a certificate thereof, which shall be signed by them and filed, as an amendment to the articles as provided herein for filing the original articles, and such increase or diminution shall commence and be operative from the date when such certificate is filed in the office of the Secretary of State: *Provided,* That in order to entitle such certificate to be filed it must show what amount of the total authorized stock, after such increase, has been subscribed, and that at least ten per cent of the total subscribed capital has been actually paid in.

Ante §§310 to 313.

Calls on subscriptions. See §314.

SEC. 11. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expenses of the sale, and the residue, if any, shall be refunded to the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

Sale of stock to pay subscriptions.

Ante §§314, 315.

Subdivision 4.—Power to Borrow Money, Mortgage Property, and Guarantee Bonds of Other Corporations

Borrowing money. See §316.

SEC. 12. Every stock corporation shall have the power to borrow money and contract debts, when necessary for the transaction of its business, or for the exercise of its corporate rights, privileges or franchises, or for any other lawful purpose of its incorporation; and it may issue and dispose of its obligations for any amount so borrowed, and may mortgage its property and franchise to secure the payment of such obligations, or of any debt contracted for said purposes. Every such mortgage, except purchase money mortgages, shall be consented to by the holders of not less than two-thirds of the capital stock of the corporation; which consent shall be given either in writing or by vote at a meeting of the stockholders called for that purpose, upon the same notice as that required for the annual meetings of the corporation; and a certificate under the seal of the corporation that such consent was given by the stockholders in writing, or that it was given by vote at a meeting as aforesaid, shall be subscribed and acknowledged by the president or a vice-president and by the secretary or an assistant secretary of the corporation and shall be filed and recorded with the instrument. *Provided, however,* That the stockholders may in the articles, or in an amendment thereto, confer general authority upon the directors to mortgage the property of the corporation, in which case each such mortgage shall contain a reference to such authority. When authorized by like consent, the directors, under such regulations as they may adopt, may confer on the holder of any debt or obligation, whether secured or unsecured, evidenced by bonds of the corporation, the right to convert the principal thereof, after two and not more than twelve years from the date of such bonds, into stock of the corporation; and if the capital stock shall not be sufficient to meet the conversion when made, the stockholders shall, from time to time, authorize an increase of capital stock

Corporate mortgages.

Conversion privileges.

sufficient for that purpose in the manner hereinbefore prescribed.

As amended by P. A. '21, First Extra Session, Act No. 20.

Ante §§316 to 318.

Guaranty of bonds of subsidiary company.

See §319.

SEC. 13. Any stock corporation lawfully owning the entire capital stock of any other domestic stock corporation engaged in the same general line of business may in pursuance of a two-thirds vote of its stockholders, voting at a special meeting called for that purpose by notice in writing signed by a majority of the directors of such corporation, stating the time and place and object of the meeting and served upon each stockholder appearing as such upon the books of the corporation personally, or by mail, at his last known postoffice address, at least sixty days prior to such meeting, guarantee the bonds of such other corporation.

Ante §§319, 320.

Subdivision 5.—Industrial Stock and Welfare

Employe's stock.

See §321.

SEC. 14. Any corporation having capital stock and organized for pecuniary gain may sell any portion of its stock, not otherwise subscribed, to its employes upon consideration of such faithful or continued employment as may be fixed by the voting stockholders; and such consideration of faithful or continued service in the employment of the company on the part of such employes shall be deemed valid and effectual to pass the title to such shares of stock. Such stock may be sold to such employes upon contract retaining title thereto and withholding the voting privileges hereof until such consideration shall have been fully executed and upon other terms and conditions as the corporation may prescribe. Such stock may have such preference and voting powers as the corporation may declare, and shall be known as "industrial stock."

Creation industrial shares.

Any such corporation may increase its capital stock for the purpose of providing for such industrial shares to any amount not exceeding ten per cent of its total authorized capital, without being required

to have property or other assets to liquidate the same at the time of such authorization, but every such corporation, so issuing industrial stock, shall set aside a reserve fund from year to year sufficient to retire any such industrial stock at its par value at maturity, if preferred as to principal, or to equal the liability of the corporation to such stockholders in the case of other stock being so issued.

Reserve.

Ante §§321, 322.

SEC. 15. Every corporation authorizing the issuance of such industrial stock shall issue a credit certificate to each person entitled to any portion of the stock, showing the number of shares, the par, or in the case of shares without par value, the assumed value thereof, the preferences, if any, and the conditions upon which and the consideration for which such shares will be issued to the holder of such certificate. Such certificate shall not be assignable or transferable, but any right to the delivery of such shares may be assigned or transferred at maturity of the contract under such rules and regulations as the corporation may enact with respect thereto. Every such corporation shall keep a record of every such certificate, showing the number thereof, the name of the holder, the number of shares so contracted for, and the date of maturity as near as can be estimated and the amount in credits required to complete the purchase. Upon such record shall be entered every credit accruing to the holder thereof, and the holder of any such certificate shall have the right to inspect any such record at reasonable times, and to have its credits entered upon his certificates as they accrue. Such certificate, when matured, shall be exchanged for a stock certificate upon presentation to the proper officers of such corporation in the same manner as other shares of stock of such corporation are issued. Such shares when issued shall be transferable and deemed fully paid to the same extent as any class of stock such corporation may be authorized to issue.

Industrial stock credit certificates.

See §323.

Ante §§323, 324.

Payment for industrial stock.

See §325.

SEC. 16. Any corporation authorizing the issuance of industrial stock may adopt and put into effect in connection therewith a plan whereby such stock may be paid for partly in cash, to be paid in from time to time, and partly in credits given for continued and faithful service to such corporation, with such conditions of forfeiture for failure to fully pay for or earn such stock as may be equitable: *Provided,* That there shall be no forfeiture of any cash payments made upon such certificate. Nothing in this subdivision contained shall be construed as authorizing any such corporation to do a banking business, but such industrial stock shall, when issued, be entitled to share in such dividends as have been declared on the common stock during the period of payment therefor in the proportion that the amount credited upon the credit certificate at the time such dividends became effective as to the common stockholders bears to the face of such shares, unless such industrial stock shall be issued with a preference as to principal in which case the dividends shall be at such rate as shall have been stipulated in the credit certificate and shall be cumulative or not as the corporation may authorize.

Ante §§325, 326.

Welfare work.

See §327.

SEC. 17. Any such corporation may, by the consent of two-thirds of the capital stock, authorize the expenditure of not to exceed ten per cent per annum of the surplus capital thereof for the purpose of providing for the social, moral, physical or educational welfare of its employes, including relief work among the families of such employes, the establishment of suitable club-rooms, schools, entertainment, gymnasiums, athletic grounds, lecture courses, and medical attendance not otherwise required by law, and all such sums of money, so devoted to the betterment of the employes shall be deemed legitimate expenses of the corporations: *Provided,* That with the consent of all of the capital stock, such amount may be increased to twenty-five per cent of such surplus in any one year.

Ante §§327, 328.

CHAPTER 3

LIABILITY OF DIRECTORS, STOCKHOLDERS, ETC., FOR DEBTS OF AND DUE THE CORPORATION

Refund of capital to stockholders.
See §329.

SECTION 1. If the capital stock of any corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.

Ante §§329, 330.

Payment unearned, dividends.
See §331.

SEC. 2. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto, shall be jointly and severally liable in an action founded on this statute, for all debts from such corporation at the time of paying or declaring such dividend.

Ante §§331 to 334.

General liability of directors.
See §335.

SEC. 3. If any corporation organized under, or subject to this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation. The board of directors shall exercise good faith in the conduct of the affairs of the corporation, and shall do no acts nor pay any salaries or bonuses which would tend to impair the company's business or to destroy the value of any part of its capital stock or securities; and the courts shall have

full power to afford the protection provided for herein upon proper application thereto.

Ante §§335 to 338.

Stock, personal property.
See §339.

SEC. 4. The stock of every corporation shall be deemed personal property and shall be subject to the provisions of act number one hundred three of the Public Acts of nineteen hundred thirteen, known as the uniform stock transfer act, as to all matters and things therein prescribed; and as to matters not therein prescribed in relation to the transfer of stock, the said corporation shall have the power to make its by-laws and other regulations.

Lien.

Such corporation shall at all times have a lien upon all stock or property of its members invested therein, for all debts due from them to such corporation.

Ante §§339 to 341.

Foreclosure of lien.
See §342.

SEC. 5. Any corporation which has a lien upon the stock of any stockholder therein as provided by the preceding section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within thirty days from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder in the same manner and by the same procedure as is hereinbefore provided for the sale of the stock of a subscriber who has not paid up his subscription, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

Ante §§342, 343.

Transfer of shares.
See §344.

SEC. 6. Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to his order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificates so issued shall entitle the holders thereof to

all the privileges, rights, and interests of a stockholder in such corporation.

Ante §344.

Lien on equity of redemption. See §345.

SEC. 7. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part thereof, and such corporation may sell the same as herein provided.

Statement by prior pledges.

Ante §§345 to 347.

Levies. See §348.

SEC. 8. Nothing contained in the three preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

Ante §§348, 349.

Labor debts. See §350.

SEC. 9. The stockholders of all corporations shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts

of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued. Nothing in this section contained shall be construed as taking away any of the remedies provided by the judicature act, so-called.

Ante §§350 to 356.

CHAPTER 4

CO-OPERATIVE CORPORATIONS

General provision. See §357.

SECTION 1. Corporations organized to conduct any lawful business upon a co-operative plan shall be governed by the provisions of this chapter as to the mode of corporate management, manner of distribution of earnings and profits, their powers and optional principles of doing business, and as to any other matters, and things prescribed herein where the provisions of this chapter are inconsistent with or prescribe regulations or features differing wholly or to any extent from those provisions of this act in other chapters hereof governing corporations generally. Otherwise, such co-operative corporations shall be subject to the provisions of this act governing corporations generally, and excepting as provided in section one of chapter one of part three of this act, shall be deemed to be corporations for pecuniary profit.

Ante §§357 to 359.

Subdivision 1

Purposes. See §360.

SEC. 2. Such corporations may engage in any lawful business within this state upon any co-operative plan adopted by the incorporators, or by the stockholders at any annual or special meeting. For the purpose of this chapter, the term "co-operative plan" shall be deemed to mean a mode of operation

whereby the earnings of the corporation are distributed, in whole or in part, on the basis of, or in proportion to, the value of property bought from or sold to stockholders or members or other persons, or labor performed for or services rendered to the corporation: *Provided,* That the foregoing definition shall not be construed as prohibiting any such corporation from paying limited dividends to stockholders based upon stock investment, or from reserving a certain proportion of earnings for future operations or for future distribution, before general distribution of net earnings shall have been authorized and made. Definition.

Ante §360.

SEC. 3. (a) There shall be printed upon each share of stock issued by such corporations a condensed statement of every article of by-law which in anywise limits the stockholders' right to assign or transfer such shares or to vote the total number of shares held at meetings of the corporation, or which forbids voting by proxy; Certificates. See §361.

(b) The provisions of the uniform stock transfer law of this state shall not be held to apply to the shares of stock of such co-operative corporations in any manner or to any extent inconsistent with the provisions of this chapter.

Ante §§361, 362.

SEC. 4. The stockholders of any such corporation shall have power: To adopt by-laws for the government and regulation of its business management, and to amend such by-laws; to determine the manner of distributing the earnings of the company upon a co-operative plan; to limit and define the powers and duties and the number of directors and officers; to delegate to the directors any particular power or authority which the stockholders themselves possess, excepting the right to elect or dismiss directors and to amend the articles of incorporation; to fix the time for holding the elections of its directors, which shall be annual unless a longer term is prescribed in the articles or by-laws; to provide the manner in which directors and of- Powers. See §363.

Voting.

ficers may be removed and their successors elected at any time by vote of the stockholders or members; to determine the manner in which stockholders may vote at stockholders' meetings by mail, and whether or not proxies may be employed, and if so, when and how; to determine whether or not stockholders shall be limited to one vote each, regardless of the number of shares held; to determine the number of stockholders or directors attending any meeting, or the number of shares represented at any meeting of stockholders shall constitute a quorum, which shall not be less than a majority of the stock outstanding in the case of meetings of the shareholders; and to provide a limitation upon the amount of capital stock which may be owned by any one stockholder therein; all of which shall be included in the by-laws or in the articles.

Quorum.

Ante §§363 to 365.

Qualification of members. See §366.

SEC. 5. The stockholders of every such corporation may also provide in their articles or by-laws, the necessary qualifications of stockholders or members, together with provisions limiting, prescribing or regulating the transfer of such membership, and the terms and conditions under which, if at all, certificates of stock may be transferred. No sale, transfer, or assignment of membership rights or of any stock in any such corporation shall be valid unless made in accordance with the articles or the by-laws of the corporation; nor shall any purchase and sale of any such stockholder's stock or privileges in such corporation made under execution, or in the course of bankruptcy proceedings, or by any legal process or by operation of law, give any person any stockholder's or membership right, title or interest in and to such corporation, unless in accordance with the articles or the by-laws of such corporation.

Transfer of stock or membership.

Ante §§366 to 367.

Amendment of by-laws or articles. See §368.

SEC. 6. The by-laws of every such corporation shall provide a practical method and plan whereby one-tenth of the entire number of members or

Number of stockholders.

stockholders may propose any desired amendment to the articles or to the by-laws of the corporation, and whereby any amendment so proposed shall be voted upon at the next annual meeting by the members or stockholders. Such by-laws shall also provide a practical method and plan whereby stockholders or members who are unable to be present at meetings of the corporation may vote by mail for directors or upon any amendment or proposition to be voted on at any regular or special meeting of stockholders or members.

Ante §§368, 369.

Investment in other companies.

See §370.

SEC. 7. At any regular meeting, or any regularly called special meeting, at which the quorum fixed by the by-laws shall be present, the stockholders of any such corporation may by a majority vote of such stockholders present or represented (if proxies be permitted) subscribe for shares and invest a portion of the reserve fund of such corporation not to exceed, at any time, twenty per cent in the aggregate of its capital in the capital stock of any other similar co-operative company or companies with which it desires to co-operate or affiliate.

Ante §§370, 371.

Purchase of other companies.

See §372.

SEC. 8. Whenever such corporation shall purchase the business of another company, person or persons, it may pay for the same in whole or in part by issuing to the selling association, person or persons, shares of its capital stock to an amount which, at par value, would equal the fair market value of the business so purchased, and in such case the transfer to the association of such business of such valuation shall be equivalent to payment in cash for the shares of stock so issued: *Provided,* That suitable provision be made in the by-laws of such corporation for admitting the vendors to such membership.

Ante §§372, 373.

Subdivision 2.—Distribution of Earnings

Dividends. See §374.

SEC. 9. The stockholders of every such corporation shall provide in the by-laws what per cent upon the paid-up capital stock of such corporation, not exceeding seven per cent per annum, shall be first paid and distributed to the holders of such paid-up capital stock as dividends before dividing the surplus earnings or profits, as herein provided, and whether or not such dividends shall be cumulative. Said by-laws shall further provide what amount or percentage of the annual profit and earnings of the business, over and above such dividends to stockholders, shall be retained and kept in the treasury of the corporation as a reserve fund, and in what manner, method and proportion the surplus annual earnings and profits of the business of such corporation, in excess of such dividends and reserve fund, shall be divided up and distributed as a co-operative dividend, under the co-operative plan or principle adopted by such corporation among members doing business with the corporation; and may also provide for co-operative dividends to non-members.

Ante §§374 to 375.

Failure to pay dividends. See §376.

SEC. 10. The surplus earnings and profits of every such corporation shall be distributed to those entitled thereto at such times as the by-laws may provide, which shall be as often as once in each year. If any such corporation shall fail for five consecutive years to pay the dividend upon its paid-up capital stock in accordance with the provisions of its by-laws, a majority of the stockholders may petition the circuit court in chancery, in the county in which the principal office of such corporation is located, for the dissolution of the corporation; and if, upon the hearing, the court finds the allegations of the petition are substantially true, the corporation may be dissolved, its business wound up and its property distributed as the court may order and decree.

Ante §§376, 377.

Contracts and commissions.
See §378.

SEC. 11. Every such corporation engaged in buying, handling, selling or dealing in farm produce or other agricultural products, canned goods, or by-products of any such goods, wares, merchandises or commodities, may enter into any and all necessary contracts respecting the terms of such transaction, and may deal in such commodities upon commission or brokerage basis, by agency agreements, or upon a warehouse storage plan, and in so dealing in such commodities such corporation may make its contracts and agreements upon a co-operative basis, if deemed advisable. In any such co-operative contract the special co-operative agreements shall be stated as subject to priorities in favor of stockholders and others as provided for in the by-laws of the corporation.

Ante §§378, 379.

Subdivision 3.—Elective Features

Short Code.
See §380.

SEC. 12. Any co-operative corporation may at its option, in its articles, adopt the provisions of this subdivision as governing its mode of operation, and in such case it shall make specific reference to such subdivision, chapter and part of this act. The adoption of this subdivision shall not exempt such corporation from the other provisions of this chapter excepting as to provisions therein inconsistent with this subdivision.

Ante §§380 to 382.

Directors.
See §383.

SEC. 13. Every such association shall be managed by a board of not less than five directors. The directors shall be elected by and from the stockholders of the association at such time and for such term of office as the by-laws may prescribe, and shall hold office for the time for which they were elected and until their successors are elected and shall enter upon the discharge of their duties; but a majority of the stockholders shall have the power at any regular or special stockholders' meeting legally called, to remove any director or officer for cause, and fill the vacancy, and thereupon the direc-

Removal of officers.

Officers.

tor, or officer so removed shall cease to be a director of said association. The officers of every such association shall be a president, one or more vice-presidents, a secretary and a treasurer, who shall be elected annually by the directors, and each of said officers must be a director of the association. The office of secretary and treasurer may be combined, and when so combined the person filling the office shall be secretary-treasurer.

Ante §§383, 384.

Amendment of articles.
See §385.

SEC. 14. The association may amend its articles by a majority vote of its stockholders at any regular stockholders' meeting, or at any special stockholders' meeting called for that purpose, on ten days' notice to the stockholders. Said power to amend shall include the power to increase or diminish the amount of capital stock and the number of shares: *Provided,* That the amount of the capital stock shall not be diminished below the amount of paid-up capital at the time when the amendment is adopted.

Ante §§385, 386.

Powers and objects.
See §387.

SEC. 15. Any association adopting this subdivision shall have power to conduct any agricultural, dairy, mercantile, mining, manufacturing or mechanical business, on the co-operative plan and may buy, sell and deal in the products of any other similar co-operative company, heretofore organized or hereafter organized under or becoming subject to the provisions of this act.

Ante §§387, 388.

Dividends.
See §389.

SEC. 16. The profits or net earnings of such association shall be distributed to those entitled thereto, at such time as the by-laws shall prescribe, which shall be as often as once in twelve months, but no person or corporation from whom purchases of goods or materials incident only to the carrying on of the business of the association are made, or to whom produce in wholesale quantities

is sold, shall in any case be included in the distribution of said profits.

Ante §389.

Voting by mail
See §390.

SEC. 17. At any regularly called general or special meeting of the stockholders a written vote received by mail from any absent stockholder and signed by him may be read in such meeting and shall be equivalent to a vote of each of the stockholders so signing: *Provided,* He has been previously notified in writing of the exact motion or resolution upon which such vote is taken and a copy of same is forwarded with and attached to the vote so mailed by him.

Ante, §§390, 391.

Distribution of profits
See §392.

SEC. 18. The directors, subject to revision by the association at any general or special meeting, shall apportion the earnings by first paying dividends on the paid-up capital stock not exceeding six per cent per annum, then setting aside not less than ten per cent of the net profits for a reserve fund until an amount has accumulated in said reserve fund equal to thirty per cent of the paid-up capital stock and the remainder of said net profits by uniform dividend upon the amount of purchases of shareholders, and to non-shareholders on the amount of their purchases at a per cent one-half as great as that paid to shareholders, which may be credited to the account of such non-shareholders on account of capital stock of the association; but in productive associations such as creameries, canneries, elevators, factories, and the like, dividends shall be on raw material delivered instead of on goods purchased. In case the association is both a selling and a productive concern, the dividends may be on both raw material delivered and on goods purchased by patrons.

Ante §§392 to 394.

Limit of shares
See §395.

SEC. 19. No stockholder in any such association shall own shares of a greater par value than one thousand dollars, or be permitted to vote by

proxy, or be entitled to more than one vote. Certificates of stock shall not be issued to any subscriber until fully paid, but the by-laws of the association may allow subscribers to vote as stockholders after fifty per cent of the stock subscribed for has been paid in cash.

Ante §§395, 396.

PART III

CORPORATIONS NOT FOR PECUNIARY PROFIT

CHAPTER 1

CORPORATIONS NOT FOR PECUNIARY PROFIT.—GENERAL PROVISIONS

Stock of non-profit companies.

See §397.

SECTION 1. Corporations whose purposes do not include the transaction of commercial or other business for a direct pecuniary profit to the members or stockholders, shall be governed by the provisions of this chapter in addition to such other provisions of this act as may be applicable thereto: *Provided,* That such corporations may transact business upon the co-operative plan, as provided in chapter four of part two of this act, if done without direct pecuniary profit to the members or stockholders. Such corporations may be organized upon either a stock share basis or upon a non-stock basis, and the membership therein may be limited either as to number or qualifications as fixed in the articles or by-laws.

Ante §§397 to 399.

Denominations.

See §400.

SEC. 2. If organized upon a stock share plan the shares of such corporation shall be of denominations of ten dollars, or a multiple of ten dollars, but shall not exceed one hundred dollars. No dividends shall be directly paid on any such shares nor shall the stockholders be entitled to any portion of the earnings of such corporation derived through increment of value upon its property or otherwise incidentally made: *Provided, however,* That upon dissolution of any such corporation, the stockhold-

Distribution on Dissolution.

ers shall be entitled to an aliquot portion of the assets thereof after the payment of all debts and the liquidation of all liabilities of such corporation, based upon their several holdings therein as represented by the shares of stock standing in the name of such stockholders at the time of dissolution. Such shares of stock shall not be transferable by assignment or sale, nor be transferred to legal heirs or devisees, upon the death of the owner thereof, unless the by-laws of such corporation make express provision therefor. Such stock corporations shall have power to exclude from further membership any stockholder who fails to comply with the reasonable and lawful requirements of the laws, rules and regulations duly made by such corporation for the government of its members, and may cancel the stock of any such offending member without liability for an accounting, excepting as may be provided for in the articles or by-laws.

Transfers of stock.

Exclusion of members

Ante §§399 to 402.

Rules. See §403.

SEC. 3. In all corporations governed by the provisions of this chapter, membership therein shall be governed by such rules of admission, retention and dismissal, as the articles or by-laws shall prescribe, provided that all such rules shall be reasonable, germane to the purposes of the corporation, and equally enforced as to all members.

Ante §§403 to 406.

Management. See §407.

SEC. 4. The property and lawful business of such corporations shall be held and managed by a board of trustees or directors, with such powers and authority as shall be necessary to the complete execution of the purposes of each such corporation, as limited by the articles, or by-laws duly made and published. No such board shall be less than three in number, and each such trustee or director shall be a member or stockholder of such corporation as the case may be. The by-laws of all such corporations shall be enacted by the stockholders or members assembled at any first or annual or special

By-laws.

meeting of the members called in accordance with the provisions of this act or as provided in the articles of association; but the members may at any such meeting authorize the directors or trustees to enact and amend the by-laws not inconsistent with the articles.

Ante §§407 to 410.

Qualification and exclusion of members. See §411.

SEC. 5. If the membership in any such corporation be limited to persons who are members in good standing in other incorporated associations, lodges, churches, clubs, or societies, the articles of association shall in each case define such limitations, and in such case it may be further provided that failure on the part of any such member to keep himself or herself in such good standing in such other corporation or association shall be sufficient cause for expelling or dismissing such member from the corporation requiring such eligibility, subject to such regulations as may be enacted in the by-laws as to the nature and formalities of evidence that shall be prima facie sufficient to justify such dismissal or expulsion.

Ante §§411 to 412.

Capitalization. See §413.

SEC. 6. No corporation organized for non-profit shall be capitalized for an amount in excess of the sum of money necessary to carry out its purposes, including the purchase or leasing of such property as may be required for its offices or in its lawful business affairs, the payment of salaries and expenses of its officers for a period not exceeding five years from the time of incorporation, and the estimated expense of conducting and consummating its purposes aside from annual or other periodical contributions from sources other than the revenue derived from annual membership fees, and no such corporation shall hereafter be capitalized at more than five hundred thousand dollars without the consent and approval of the Michigan Securities Commission created by act number forty-six of the Public Acts of nineteen hundred fifteen, after a hearing upon the merits and necessities therefor. The Michigan Securities Commission shall have full

Power and authority.

power and authority in the premises to permit and regulate the use of such further capital as may be shown to be necessary and beneficial to the purposes of such corporation: *Provided,* That the limitation of capital prescribed herein shall in no case apply to corporations organized to carry out the provisions of any trust deed, or instrument, or of any will or other testamentary disposition of property wherein property of a definite value is committed or disposed of in trust, or wherein such property may be used in connection with property or means derived from sources outside of that so placed in trust, to carry out the intention of the maker of such instrument.

Ante §§413, 414.

Membership fees and dues. See §415.

SEC. 7. All such corporations are hereby empowered to fix the amount of the membership fees or dues which members may be required to pay initially or periodically, as a condition of admission or retention as such members, and to make rules necessary to enforce such requirement including provisions for cancellation of membership for nonpayment of such dues or obligations and for reinstatement in such membership.

Ante §§415, 416.

Voting rights. See §417.

Sec. 8. Each member of such corporations shall be equally privileged with all other members in his voice and vote upon any proposition presented for discussion or decision at any meeting of the members or stockholders, excepting that in stock corporations formed hereunder each shareholder may, if so provided in the articles or by-laws, be entitled to a number of votes equal to the number of shares of stock held by him; and otherwise there shall be no preferences as between members or stockholders based upon obligations of the corporation to the members or stockholders therein.

Ante §§417, 418.

Powers. See §419.

SEC. 9. Any such corporation the objects of which require the transaction of business, the re-

ceipt and payment of money, the care and custody of property, and other incidental business matters, shall have the right and power to transact such business, and to receive, collect and disburse such moneys, and to acquire, hold, protect and convey such properties as are naturally or properly within the scope of its articles.

Ante §§419, 420.

Included Objects. See §421.

SEC. 10. The provisions of this chapter shall be held to apply to all associations, societies and corporations of the nature of clubs, boards of trade and commerce, associations of persons engaged in the same or allied professions, trades, occupations and industries, when such persons desire to associate for mutual benefit, comfort or instruction not involving direct pecuniary profit; and to societies for the advancement of particular scientific or sociological, political views or opinions, the collection and dissemination of historical or scientific facts, the advancement of literature, cultivation of art, the prevention of cruel and inhuman practices, and to any other such society whether enumerated herein or not, so long as the purpose or purposes thereof are lawful, and not for direct pecuniary profit of the members: *Provided,* That any association or society heretofore incorporated and now existing whose purpose is to provide for the relief of distressed members, visitation of the sick, burial of the dead, and the payment of a voluntary sick or burial benefit to or for members, not exceeding in all the sum of one hundred fifty dollars on account of any one member, or the buying and selling of products for its members without direct pecuniary profit to the association or its members may operate under this chapter as a non-profit corporation.

Ante §421.

Liability of trustees or directors. See §422.

SEC. 11. The funds and property of all such corporations shall be acquired, held and disposed of only for their lawful purposes, and the trustees or directors shall be individually liable for the misapplication or misuse of any such money or property

caused through the neglect of such director or directors to exercise reasonable care and prudence in the administration of the affairs of such corporation or through wilful violation of the laws governing the same.

Ante §§422, 423.

Borrowing Money. See §424.

SEC. 12. Any such corporation may, whenever its general interests require the same, borrow money and issue its promissory note or bond for the repayment thereof with interest, and may in like case mortgage its property as security for its debts or other lawful engagements, provided always, that the by-laws expressly authorized such action to be taken, or that the same is authorized by resolution of the stockholders or members at any regularly called meeting. No such promissory note or mortgage shall be valid unless so authorized, but no such note or mortgage shall be deemed to be invalid for failure of the stockholders or members to include in their authorities the particular sums, rates of interest, or times of maturity of the loan or engagement, which items may be agreed upon and authorized by the directors.

Mortgages.

Ante §§424, 425.

CHAPTER 2

BENEVOLENT, CHARITABLE, SOCIAL AND SECRET SOCIETIES AND ORDERS

Subdivision 1.—State Jurisdiction

Act exclusive See §426.

SECTION 1. All societies, fraternal or otherwise, having for their principal purposes the teaching, practice and extending of patriotism, benevolence, charity and fraternity under the form of secret rituals with a lodge form of government as commonly understood, desiring to be incorporated to more effectually carry out such purposes, shall hereafter incorporate under the provisions of this chapter and act. No such society or lodge whose parent

organization is incorporated under the laws of any other country or state shall be permitted to organize or incorporate any subordinate state or local jurisdiction or lodge within this state without first applying for and receiving permission to do business within this state as such foreign corporation.

Ante §426.

Incorporation.
See §427.

SEC. 2. Any three or more persons, citizens of this state, may incorporate a secret society or lodge, fraternal or otherwise, for the purposes mentioned in section 1 hereof, which shall be the parent organization for this state. If such society or lodge shall be intended to operate as a state jurisdiction of a lodge or society having a parent organization without this state, then such persons so incorporating shall exhibit with their articles the charter or permit from such foreign parent society or lodge permitting such incorporation within this state. The persons so incorporating shall execute and file articles in the form prescribed in chapter two, part one of this act, with the Secretary of State, as prescribed for non-profit corporations generally; and in addition to the other requirements of said chapter two, the incorporators shall state in such articles:

Ritual.

(1) That such society or corporation shall have a secret ritual, and a representative form of government, whose purposes are not unlawful; and

Officers.

(2) The executive offices within such society by such peculiar name as they shall be respectively known;

Purposes.

(3) The principal features of organization, the distinguishing purposes, and the name of the society by which all subordinate lodges thereof shall also be known when organized.

Ante §§427, 428.

Ritual.
See §429.

SEC. 3. Every such parent corporation shall have the right to prescribe the ritual to be used in all the secret work of such lodge or society, the oaths or other obligations to be taken by members or officers, and to enact by-laws, rules and regulations having uniform application throughout the

Subordinate organizations.

organization. No such ritual, rules, regulations or by-laws shall be inconsistent with the laws of the United States or of this state. Such parent corporation shall have the right to organize and charter subordinate lodges or societies thereof, and to enact a system of discipline to which all such subordinate lodges and individual members may be compelled to conform under pain of expulsion therefrom; and to prescribe the terms and conditions under which such subordinate lodges and members may be admitted, retained in good standing or suspended or expelled from such membership. Such parent corporation may delegate to its officers, committees and to subordinate jurisdictions, such functions and powers as the articles or by-laws of such corporation may from time to time prescribe, not inconsistent with the laws of this state.

Ante §§429, 430.

Discipline. and dues See §431.

SEC. 4. Every such parent corporation shall have the right to superintend, visit, instruct and guide its subordinate lodges and jurisdictions, through its duly appointed officers, agents and committees; may appoint its courts or judicial functionaries for the enforcement of its system of discipline within such lodge; may prescribe the initiation fees and annual or other periodic dues or contributions upon which membership may be conditioned, and may prescribe the proportion of such funds that shall belong to such parent corporation for the work of organizing, maintaining and carrying out the purposes of the society as a whole.

Ante §§431, 432.

Management. See §433.

SEC. 5. The fiscal and business affairs of every such parent corporation shall be managed by such executive officers, committees, directors or trustees as the articles shall prescribe, who shall severally have such powers and liabilities as may be prescribed in the articles or in by-laws made pursuant thereto. The articles shall in all cases state the name of the committee having authority to

enact the original by-laws of the parent corporation, and when and how the members thereof shall be elected or appointed and for how long such committee shall hold office. Every such parent society shall designate an officer who shall be its secretary whose powers and duties shall conform to those prescribed in this act for secretaries of corporations generally.

Original by-laws.

Ante §§433 to 435.

SEC. 6. No such parent corporation shall assume a name already in use by any other corporation, lodge, or society incorporated under the laws of this or any other state of the United States and admitted to do business in this state, nor any name which is so similar to that adopted by any other such lodge, or society as to lead to confusion or deception: *Provided, however,* That local or other subordinate jurisdictions shall in all cases use the name of the parent corporation in addition to some suitable local designation.

Name.
See §436.

Ante §§436, 437.

SEC. 7. Every such parent corporation shall have power to hold in fee or otherwise, such real estate, and to own such personal property, as may be necessary to establish its state headquarters, or any charitable home or institution established or maintained by it, and for that purpose may contract for the purchase of land, take conveyance of, purchase, lease or rent such real estate as may be so necessary; and may in connection with any land or building erected thereon let or sublet any vacant space therein or thereon not necessary to the immediate requirements of the corporation. In case it shall become necessary or advisable for the corporation to execute any contract for the purchase of such land or the lease of any such building, or to sell, mortgage or convey the same, the executive or other committee or trustees having charge of the fiscal affairs of such corporation shall designate at least two officers of such corporation to execute and deliver such instruments on behalf of the

Powers.
See §438.

corporation, as shall have been authorized by such committee or trustees.

Ante §438.

Government. See §439.

SEC. 8. Every such parent lodge or society so incorporated within this state shall adopt a representative form of government, under which form the subordinate lodges shall elect or appoint representatives to attend the annual or other convention, conclave or meeting of the parent corporation, by whatsoever name such meeting shall be known, and at which annual meeting the officers and committees of such parent or state society shall be elected by a majority vote of such representatives. The first annual meeting shall be held at a time and place to be fixed by the executive committee of the parent corporation; and thereafter such time and place shall be fixed by the convention itself.

First meeting.

Ante §§439, 440.

Annual meeting. See §441.

SEC. 9. The annual convention, conclave or meeting, when duly called to order, shall have power and authority to elect the officers and the executive committee or trustees of such parent state corporation; to elect delegates to any higher jurisdiction within said lodge or society; to alter or amend the articles or by-laws of the state parent corporation not inconsistent with the state charter of such lodge or society; to determine questions of discipline or policy; and to act upon such other matters as the articles or by-laws may require to be presented to such convention for action.

Ante §441.

Subdivision 2.—Local Jurisdictions

Incorporators. See §442.

SEC. 10. Any number of persons who are members in good standing in any lodge incorporated as a parent society or lodge within this state, and having a charter or permit from such parent lodge or society, may incorporate as a local lodge or branch thereof, upon complying with the provisions of this act appropriate to such corporations. The pur-

pose of all such local lodge corporations shall be to further the interests of the parent society or lodge in such community, to hold the property of such local lodge or society, and to become integral members of the parent lodge or society. Purpose

Ante §§442, 443.

SEC. 11. The articles of such local lodge or society shall follow the form prescribed for non-profit corporations in this act and shall contain such further statements as the incorporators may wish to insert therein as to purposes and government. Every such articles shall state that such local lodge has been granted a charter by the state parent corporation, if there be one. Articles. See §444.

Ante §§444, 445.

SEC. 12. Every such local lodge shall have the same right to hold, own and dispose of property, both real and personal as is granted in this act to non-profit corporations generally; and such local lodge shall be subject to the discipline, visitation and guidance of the parent lodge or society, or other higher jurisdictions as the plan of higher organization may prescribe. Powers. See §446.

Ante §446.

SEC. 13. Every such local lodge or society shall have such officers, committees, trustees and agents as their articles or charter may prescribe, who shall be elected or appointed and who shall have such duties, responsibilities and powers, as the charter, articles or by-laws may prescribe. Officers. See §447.

Ante §447.

SEC. 14. Every such corporation, whether parent or local, shall have all the rights, powers, immunities and privileges granted by this act to non-profit corporations generally, and, excepting as in this chapter prescribed, shall be subject to the liabilities imposed by law upon all corporations in this state. Rights and liabilities. See §448.

Ante §448.

Relief work.
See §449.

SEC. 15. Every such lodge whether parent or local shall have authority to make provision for the visitation of the sick and afflicted members; to provide funds for the relief of distressed members and their families; to provide funds for the burial of indigent or other worthy members: *Provided,* That no such funds shall be raised or maintained in the way of dues, assessments or levies based upon an insurance rate, table or contract express or implied: And *provided further,* That no such money shall be paid out of the treasury of any such lodge without the express order of the lodge itself or a committee duly authorized to consider and act upon such cases: *Provided, however,* That nothing in this chapter contained shall be construed as prohibiting any such lodge from establishing and maintaining charitable homes or other institutions for its aged, afflicted or infirm members under the provisions of this act applying to trustee corporations. Ante §§449, 450.

PART IV

TRUSTEE, EDUCATIONAL AND ECCLESIASTICAL CORPORATIONS

CHAPTER 1

TRUSTEE CORPORATIONS

Subdivision 1.—General Provisions

Definition. See §451.

SECTION 1. A trustee corporation is hereby defined to be any corporation wherein the trustees appointed by any instrument in writing, whether testamentary or otherwise, to have the title, care, custody or disposition of property or the income therefrom, in trust for such uses and purposes as may be named in such instrument, for the benefit of religious, charitable, benevolent, educational, institutions or public benefaction of whatsoever name or nature and any other persons who may be lawfully associated with them, incorporate for the express and main purpose of carrying out the provisions of such trust. The term "trustee corporation" may also embrace any case in which trustees hold in their corporate name, any separate property of the corporation of which they are trustees for specific purposes defined or limited by any written instrument donating, setting aside or devoting such separate property for charitable, religious, benevolent, educational or other beneficial purpose, or where such property is so held by the said trustees under the terms of written instructions as to the use thereof from the governing body of any ecclesiastical, fraternal or charitable society, association or corporation. Such trustees shall in no case have

Other specific trusts embraced.

Trustees.

any personal interest in or title to any part or portion of such trust property, nor derive any personal benefit from the principal or income thereof, excepting in the way of just compensation for their labor and skill in executing such trust or by way of reimbursement for necessary and actual expenses incurred in the management of such property or in the performance of their duties as such trustees, or except upon authority expressed in the original deed or instrument of trust. Nothing in this chapter contained shall be construed as preventing or prohibiting any trustees appointed or provided for under the terms of any deed, will or other written instrument to have the title or management of any property, whether real or personal, for the benefit of the donor or grantor therein or the heirs, dependents or other beneficiaries of such donor or grantor, and not for charitable, religious, educational or benevolent purposes, from incorporating under this act for the purpose of executing such trust, if such incorporation be permitted, directed or contemplated in such instrument, and the business of such corporation, when organized, is one which a corporation might otherwise carry on under this act: And *provided further*, That declarations of trust shall not be sufficient in themselves to authorize the trustees named therein to assume corporate powers, but all such trustees referred to in this chapter shall be incorporated only in the manner prescribed in and by complying with the provisions of this act.

Other trust objects.

Ante §§451 to 454.

SEC. 2. In any case mentioned in the foregoing section where property, whether real, personal, or mixed, amounting in value to one thousand dollars or more, has been or hereafter shall be so given, granted, devised, or bequeathed to three or more trustees, or in any case where the income from any property or fund has been or hereafter shall be so given, or bequeathed to such trustees for any such purpose, where the annual amount of such income is one thousand dollars or more, and where it shall, for the more effective and perfect admin-

Values involved.

See §455.

istration of any such trust, be deemed expedient to organize themselves as a corporation, then it shall be lawful for such trustees to become incorporated under this chapter. The term "trust instrument" or "instrument of trust" as used in this act shall be construed to mean and refer to any lawful deed of gift, grant, agreement, or any last will and testament by which the donor, grantor, or testator shall give, grant, devise, or bequeath any property, real, personal or mixed, in trust for general or specific uses; and any and all conditions, terms or directions contained therein; and any act, declaration or instructions of a legal nature made by any corporation or body directing or authorizing trustees thereunder to take, receive, hold, manage or dispose of any of the property of such corporation for general or specific purposes for the benefit of such persons or objects as may be therein designated. Such term shall not include constructive or resulting trusts.

Trust instrument defined.

Ante §§455 to 458.

SEC. 3. The articles shall, in addition to other requirements made in this act, state:

Articles.
See §459.

(a) The nature of the business, if any, in which such corporation will be engaged, and the nature and value of the trust property; and to all such articles, wherever filed, there shall be attached verified copies of every trust instrument or other written directions upon which such trust is founded;

Nature of business.

(b) The number of persons who shall constitute the permanent board of trustees of such corporation; the length of time for which the trustees are authorized to act after election or appointment as the case may be; and the mode in which their successors shall be elected or appointed;

Board of trustees.

(c) Whether or not other persons than the incorporators are, or may become, members or stockholders thereof.

Membership.

Ante §§459 to 460.

SEC. 4. Every trustee corporation shall have officers corresponding to those prescribed for corporations generally in this act, appointed or elected

Officers.
See §461.

as such trustees may agree upon by majority vote, or as may otherwise be provided for in the trust instrument. Such corporation shall have all the rights, powers, privileges, and immunities conferred by law upon general corporations, excepting as limited in the trust instrument or by the provisions of this chapter.

Rights and Powers.

Ante §461.

May take additional property.

See §462.

SEC. 5. Unless otherwise prohibited or not contemplated in the trust instrument, such trustee corporation may by gift, grant, devise or bequest, take, receive and hold any property real or personal, so given, granted, devised or bequeathed from other persons than the person or persons by whose deed, will or other instrument the trust was originally founded. Any two or more persons may by the same instrument or by separate instruments, give, grant, devise, or bequeath property in trust, for any of the purposes mentioned in section one hereof, to the same trustees upon such terms and conditions as may in such instrument or instruments be agreed on, and such trustees, if authorized to incorporate, shall attach to the articles of incorporation each and every one of such agreements, and shall be governed by the conditions therein imposed upon them, if not incompatible one with the other. After incorporation to carry out the express directions or conditions of any such trust instrument, no such trustees shall thereafter accept any gift, grant, devise, or bequest upon any condition or conditions incompatible with the articles or with any instrument required to be attached thereto.

Ante §§462, 463.

Responsibility of trustees.

See §464.

SEC. 6. The property and funds of every such corporation shall be faithfully and exclusively used for the purposes thereof as set forth in its articles or as required by the terms of the trust instrument; and such trustees shall be held to the same degree of responsibility and accountability with respect thereto as if not incorporated, excepting where a less degree or a particular degree of responsibility and accountability is prescribed in the trust instru-

ment, or where such trustees remain under the control of members or stockholders in such corporation other than themselves who retain the right to direct and do direct the action of the trustees as to the use of such trust property from time to time. Nothing herein contained shall be construed as prohibiting any such board of trustees, having more than five members, from appointing an executive committee or such other committees as they may desire, with such powers and division of work and responsibility as such board may agree upon, not inconsistent with the trust instrument or with the general provisions of this act governing the management and powers of corporations. Such corporation may, unless otherwise specifically directed in the trust instrument, invest its funds by loan or mortgage security, or by purchase of any city, county, state or United States bonds, and of any other bonds authorized by the laws of this state for purchase by savings banks, or by loans on pledge of the same: *Provided,* That no loan of such funds shall be made to any trustee, officer or servant of such corporation.

Executive committee.

Loans and investments.

Ante §§464, 465.

SEC. 7. In any case where the trust instrument fails to provide for the filling of vacancies among the trustees due to death, disability, resignation or other cause, and such vacancy occurs, the remaining trustees may apply to the circuit court in chancery of the county where the principal business office of such corporation is located, for the appointment of some suitable and competent person to fill such vacancy, and the circuit judge thereof may, upon such ex parte or other showing as he may require, make such appointment by an appropriate order, and the person so appointed shall, upon filing his written acceptance as such trustee, be and become a trustee of such corporation with the same powers as those originally appointed. A certified copy of every such order shall be forthwith filed with the Secretary of State and with the county clerk or clerks where the original articles were filed.

Vacancies.
See §466.

Ante §§466, 467.

Direction by court.
See §468.

SEC. 8. In any case where the trustees of any such trustee corporation are in honest doubt and unable to agree as to the construction of any of the terms or conditions of any such trust instrument or their powers or duties thereunder, any or all of such trustees may file his or their petition in the circuit court in chancery for the county in which the principal business office of such corporation is located, asking for the construction of the said court upon the whole or any part of such instrument, under and by the same procedure as is provided by law for the construction of wills. In case any public interest is involved, the prosecuting attorney of such county shall enter his appearance therein, and shall do so in all cases involving hospitals or charitable homes or similar institutions to which the general public may be admitted on application. If less than the entire board of trustees joins in such petition, the remaining members shall become defendants and shall be served with such notice or other process as the rules of the court may require. Such court shall have jurisdiction to determine every doubtful, or disputed question raised by such petition, and the opinion and directions of such court, when filed, shall be binding upon such corporation and the trustees thereof.

Ante §468.

Alteration of trust instrument.
See §469.

SEC. 9. If the donor, or grantor in any such trust instrument, shall desire to alter, amend, enlarge or restrict the gift or grant or any of the terms or conditions thereof, and does so, it shall be the duty of such trustees to forthwith file a verified copy of such amended trust instrument with the Secretary of State and the county clerk where the original articles were filed, and any amendments to such articles occasioned by such amended trust instrument shall likewise be forthwith made and filed by such trustees, but no such amendments to the articles shall be valid that change the original purposes of the corporation in their entirety.

Ante §469.

Subdivision 2.—Hospitals or Asylums

Charitable institutions.
See §470.

SEC. 10. In all cases where lands, or any other property, amounting in value to five thousand dollars or upwards, have been or shall hereafter be given, granted, devised or bequeathed to three or more trustees for the purpose of founding or endowing a hospital or other charitable asylum for the care or relief of indigent or other sick or infirm or aged persons, or the care of minor orphans or crippled children or for the care and protection of unfortunate women, or any number of such purposes, such trustees may incorporate under this act as a trustee corporation. Unless restricted by the trust instrument in respect thereto such trustees may unite in such incorporation with other persons contributing to the maintenance of such hospital or asylum, and all such other persons shall become members of such corporation upon making such contribution as may be fixed and determined in the articles or by-laws of the corporation: *Provided,* That any three or more persons may incorporate for any such charitable purpose as a trustee corporation, where the hospital, home, asylum, or other institution to be founded by such corporation is to be constructed, equipped and maintained principally by donations not made under any trust deed or other instrument in writing declaring the uses and purposes to which such property shall be devoted, and every such corporation shall have authority to fix and prescribe the terms and conditions of membership therein.

Additional members.

Trusts maintained principally by informal donations.

Ante §470.

Control of children.
See §471.

SEC. 11. The trustees of such corporation, or a majority of them, are hereby authorized and empowered to indenture or apprentice to responsible persons, any destitute or foundling children now, or which may be hereafter, in charge or care of said corporation, until such children shall respectively become of lawful age, and to make such indenture in each case as binding and effective in all respects as if said trustees were the lawful parents

or guardians of said children: *Provided,* Said trustees shall have power to withdraw such child from any person to whom he or she may be indentured, when in their opinion the interests of the child may require it.

Ante §§471, 472.

Subdivision 3.—Fraternal, etc., Hospitals, etc.

Incorporation of certain charitable institutions. See §473.

SEC. 12. Whenever there shall exist any hospital, asylum, home for the care of indigent, aged or infirm persons, or any other charitable institution in this state, the legal title to which and the land used in connection therewith has been conveyed to one or more persons in trust, for charitable purposes, and the care and management of which institution is entrusted to a board of control consisting of five or more persons, appointed from one or more charitable, religious or fraternal bodies, in pursuance of the provisions contained in the deed conveying the legal title of such institution and land to such trustees, such board of control may become incorporated as a trustee corporation and become subject to the provisions of this chapter.

Ante §473.

Powers See §474.

SEC. 13. Such corporation may receive gifts, bequests and devises of money and other personal property and real estate for the benefit of the hospital, asylum or home for the care of indigent, aged or infirm persons, or other charitable institution which it has in its charge, and shall have power to sell such real estate and personal property as shall be given to it, and invest the proceeds thereof in the same manner as is provided in this chapter for the investment of gifts and bequests of money to trustee corporations whenever, in the judgment of the proper officers or committee or committees of such corporation, it may be deemed beneficial to such institution.

Ante §474.

Subdivision 4.—Trustee Corporations for Certain Religious Societies

Association of associations. See §475.

SEC. 14. When there is organized within this state any presbytery, diocesan convention, diocese, synod, conference, district or other organization, being an association of congregations or societies, or a quarterly conference of a station, mission, class, congregation, circuit or other organization of a religious denomination, which shall desire to possess corporate powers in order to effectuate the purposes of such organization or to create a corporate board of trustees for any endowment or other property of the denomination represented by such body, such diocese, presbytery, diocesan convention, synod, conference, board of district stewards, or a quarterly conference thereof, may, at a meeting thereof held and conducted according to the rules and regulations of such organization, association or quarterly conference, elect trustees in number not more than nine nor less than three, and also designate the corporate name by which such trustees and their successors in office shall be known. It shall be the duty of the officer presiding over such election to give to such trustees a certificate of their election under his hand and seal, specifying the name by which such trustees and their successors shall thereafter be known. They and their successors shall hold their offices for the term specified in such certificate of election, or until the organization or association first making such election elects others to succeed them. Such trustees, upon receiving certificates of their election, shall file articles with the Secretary of State and the county clerk of a county within whose bounds such electing body is authorized to meet, and shall be subject to the provisions of this act relating to trustee corporations.

Ante §§475, 476.

Trustees and vacancies. See §477.

SEC. 15. Elections of trustees to fill the places of those whose terms of office expire shall take place at the last regular meeting of such presbytery,

synod, conference, diocesan convention or other representative body occurring prior to the expiration of the term of their predecessors. Vacancies in any such board of trustees caused by death, resignation, removal, declination to serve, or otherwise, may be filled by the appointing body at any regular meeting thereof, or at any special meeting called for that purpose, or for that and other purposes, pursuant to the rules of such body.

Ante §§477, 478.

Powers. See §479.

SEC. 16. Such trustees may, in their corporate name, take and hold all property, real and personal, devised, bequeathed, transferred or conveyed to them for use and benefit of the religious denomination by whose representative body they are appointed. In the management and disposition of such property they shall be governed by the terms of any will, deed, or other instrument by which such property shall be given to them, and subject to such terms, by the directions of the body by whom they were elected.

Ante §§479, 480.

Investments and collections. See §481.

SEC. 17. The said trustees may, in their corporate name, invest and re-invest the property in their hands and under their control as such trustees, collect the rents, issues and profits thereof, and out of the same pay the taxes, repairs, insurance and other expenses incident to the care thereof: *Provided, however,* That the said trustees shall neither sell, convey, mortgage, nor lease for a longer period than three years, any real estate held by them as such trustees, unless duly authorized to do so by the presbytery, synod, conference, diocesan convention, or other representative body which appointed them. And in every case of sale, conveyance or incumbrance of real estate, said trustee shall cause to be filed in the office of the register of deeds in the county in which such real estate is situated, with the instrument, a copy of the acts of said presbytery, synod, conference, diocesan convention, or other representative body authorizing such sale,

Sales, conveyances and mortgages.

conveyance or incumbrance, duly certified by the secretary of said representative body to be a true and complete copy of said proceedings. And such certificate so made and filed shall be prima facie evidence of the facts therein recited. Certification.

Ante §481.

Subdivision 5.—Foundations for the Promotion of Public Welfare

SEC. 18. Any number of persons, not less than three, may become incorporated as a foundation for the purpose of receiving and maintaining a fund, or funds, and applying the income thereof to promote the preservation and perpetuation of persons and objects of historical and natural interest. Any such foundation shall be authorized to expend its funds and income from time to time as shall seem expedient to the trustees of such foundation, hereinafter provided, for the purposes of such foundation, which may include the preservation of forests; the establishment and maintenance of museums or parks for the benefit of the people; the collection and preservation of historical documents, data, research and publications; and to extend aid and support to any such objects and purposes, agencies or institutions already established, or which may hereafter be established. Every such corporation shall be governed by the provisions of this act relating to trustee corporations excepting as in this subdivision otherwise provided. Public welfare foundations. See §482.

Ante §§482, 483.

SEC. 19. The foundations hereby authorized shall have power to take and hold by bequest, devise, gift, purchase or lease, either absolutely or in trust, for any of its objects and purposes, any property, real, personal or mixed, without limitation as to the amount of value, except such limitations, if any, as the legislature shall hereafter specifically impose; to convey such property and to invest and reinvest the principal thereof and deal with and expend the income of the foundation in such man- Powers. See §484.

ner as in the judgment of the trustees will best promote its objects.

Ante §484.

Foundation non-profit corporations.
See §485.

SEC. 20. Every such foundation shall be a non-profit corporation and subject to the provisions of chapter one of part three of this act excepting as herein otherwise provided. All of such property and accumulations thereof shall be held and administered to effectuate the purposes stated in the articles and to serve the general welfare of the people: *Provided,* This section shall not prevent such foundations from charging an admission fee, or similar charge, to museums, forest reserves, parks and other institutions organized hereunder for the sole purpose of paying the expense of maintenance.

Admission fees.

Ante §485.

Trustees of foundations.
See §486.

SEC. 21. The trustees shall provide in the articles the terms and the manner in which members may be admitted to foundations established in pursuance of this subdivision. The affairs of such foundation shall be managed by trustees to be elected by the members as provided by the by-laws, but in no case shall the number of trustees be less than three or more than fifteen. Such trustees shall hold their offices for one year, or such other period as the by-laws shall determine and until their successors are elected and qualified.

Ante §486.

Dissolution.
See §487.

SEC. 22. Should any corporation organized under this subdivision cease to operate or its fund be diverted from the lawful purposes of its organization, or become unable to usefully serve such purposes, the legislature may by law provide for the winding up of its affairs and for the conservation and disposition of its property, in such way as may best promote and perpetuate the purposes for which such corporation was originally organized.

Ante §487.

Scholarship funds.
See §488.

SEC. 23. The provisions of this chapter shall apply to corporations heretofore or hereafter formed for the purpose of providing scholarships in the University of Michigan or in any of the publicly maintained schools or colleges of this state; and to corporations formed for the purpose of loaning money or giving other assistance to students at any of said schools, or colleges or said university, but no such corporation heretofore formed shall be required to change or amend its articles or by-laws by reason of anything contained in this chapter, nor shall the rights, powers, privileges, immunities or the mode of doing business of any such existing corporation be deemed to be affected by any provision hereof which may be inconsistent with the provisions of the act under which any such corporation shall have been organized. Every corporation heretofore formed under any law of this state for benevolent or charitable purposes, and having no capital stock, shall be deemed to be a trustee corporation within the meaning of this chapter and shall be subject to the provisions hereof excepting as such provisions may conflict with the articles and by-laws of any such corporation lawfully made and enacted pursuant to the act under which incorporated. But any such corporation may amend its articles and by-laws so as to bring itself in conformity with the provisions hereof.

Ante §488.

CHAPTER 2

EDUCATIONAL CORPORATIONS

Subdivision 1.—General Provisions

Educational corporations.
See §489.

SECTION 1. Corporations for the purpose of founding, establishing and operating a college, seminary, academy, school, conservatory or other institution of learning shall be governed by the provisions of this chapter in addition to such other

provisions of this act as may be applicable to the particular class of corporation so organized.

Ante §§489, 490.

Articles and classification. See §491.

SEC. 2. Every such corporation with the exception of those hereinafter specified in sub-section (c) hereof, before being authorized to file its articles, shall be required to make a showing in its articles that at least fifty per cent of its capital, whether of stock or in gifts, devises, legacies, bequests or other contributions of money or property, has been paid in or reduced to possession. In respect of such capital such corporations shall be classified as follows:

(a) Those having a capital of not less than one hundred thousand dollars;

(b) Those having a capital of not less than five thousand dollars, and less than one hundred thousand dollars;

The term "capital" as herein used shall be construed to include money or property whether derived from shareholders' stock, or from donors, grantors or others in trust, by deed, will or by other voluntary pledge or contribution, or any or all of such sources;

(c) Those instituted and maintained by any ecclesiastical or religious order, society, corporation or corporations, retaining control of such institution for denominational purposes.

Ante §§491, 492.

Authority. See §493.

SEC. 3. (a) Corporations of class (a) as defined in section two of this chapter shall have authority to establish and conduct general colleges for furnishing higher learning and to confer such degrees and honors as are commonly conferred by other like colleges and universities in the United States; and the term "college" as herein used shall be construed to include any college, university or other institution where the arts, sciences, professions and higher learning are taught and degrees and honors therein conferred. Such colleges may also include preparatory schools as commonly understood;

(b) Corporations of class (b) as defined in section two hereof, shall have authority to establish and conduct special colleges, seminaries, academies or preparatory schools, but not general colleges or universities, as defined in sub-section (a) hereof; Authority.

(c) Corporations of class (c) shall embrace such schools, academies, or colleges as have been heretofore founded under act number one hundred thirty-five, Public Acts of eighteen hundred ninety-nine, known thereunder as Ursuline academies; those founded under act number one hundred twenty-one, Public Acts of nineteen hundred fifteen, and known thereunder as ecclesiastical seminaries; those founded under act number twenty-eight, Public Acts of 1901, and known thereunder as "Evangelical Lutheran deaf mute institutions"; those founded under act number one hundred thirty-five of the Public Acts of eighteen hundred sixty-seven, known as industrial and charitable schools; and such other schools, colleges, and institutions of like character and purpose as may be formed hereafter under this act: *Provided,* That any corporation heretofore formed under any law of this state for educational purposes shall have all of the rights, powers, privileges and immunities enjoyed under its act of incorporation and without regard to the classification made in this chapter, and upon complying with the provisions hereof shall have such additional rights, powers, privileges and immunities as are conferred hereunder according to the classifications prescribed in this chapter: *Provided further,* That any corporation heretofore formed under act number three hundred fifty-nine, Public Acts of nineteen hundred thirteen, and known thereunder as "kindergarten institutions," shall hereafter be classified under class (b) of sections two and four of this chapter. Pre-existing educational corporations.

Ante §§493, 494.

SEC. 4. The articles of every such corporation shall clearly set forth briefly the educational system of the degrees, honors, diplomas, or certificates of the institution to be founded and the character which it proposes to grant. If a college or univers- Articles. See §495.

ity, the articles shall state the number and name of the faculties to be established; and if a denominational religious school or college, the name of such denomination and the body supporting or controlling the same; and such articles shall in other respects comply with the requirements of this act.

Increase of capital.

Any such corporation may, by increasing its capital to a higher class and amending its articles, assume the powers and privileges of such higher classification as it may thereby be entitled to as defined in this chapter.

Ante §§495, 496.

Power to accept gifts, devises, etc.

See §497.

SEC. 5. The directors or trustees of any such corporation may accept gifts, devises, legacies or bequests, of personal or real property, or the principal or interest of any money or other fund, in trust for the benefit of such institution or particular faculties, departments or other special purposes thereof; and such trustees or directors shall hold and dispose of such trust funds in accordance with the directions and wishes of any of the donors in each case; and shall account for all such funds and property in such manner and at such times as may be appointed in the instrument, deed or will accompanying the donation or as provided by law or the articles or by-laws of such corporation, made pursuant thereto. Where no other provision is made with respect thereto, the directors or trustees of every such corporation shall be governed as to their duties, powers and responsibilities, by the general provisions of this act respecting such boards; and as to their trusteeship of property they shall be governed by the provisions of this act governing trustee corporations.

Ante §497.

Management.

See §498.

SEC. 6. The control of the business and secular affairs of every such corporation shall be vested in a board of directors or trustees. Such board shall also have exclusive control over the educational affairs and policy of such institution, and as such may:

First, Appoint, employ and pay the salary of a president, or principal, and such professors, tutors, assistants, and employes, as the board shall determine necessary; President.

Second, Direct and prescribe the course or courses of study and the rules of discipline for such institution, and enforce the same; and prescribe the tuition and other fees to be paid by students attending such institution;

Third, Grant such diplomas, certificates of graduation, or honors and degrees, as the nature of the institution may warrant, or as contemplated in the articles;

Fourth, Delegate to the president or principal, and the various professors and tutors, such authority over the educational affairs of the institution as the board may deem advisable;

Fifth, Co-operate with other schools, colleges and educational institutions within this country in promoting the best interests of education.

Ante §§498, 499.

SEC. 7. Every diploma, certificate of graduation, or other evidence of attendance at such institution, shall entitle the lawful recipient thereof to all the privileges and immunities which by custom or usage are allowed to holders of similar diplomas or certificates granted by similar institutions in this country: *Provided,* That as to any occupation or profession regulated by statute as to the requirements and qualifications necessary to the practice thereof, no such diploma or certificate of graduation shall entitle the recipient to any such privilege or immunity where such statutory requirements or qualifications have not been complied with. Diplomas. See §500.

Ante §§500, 501.

SEC. 8. Every such corporation shall be subject to the visitation and inspection of the Superintendent of Public Instruction, in person or through visitors or inspectors appointed by him, at such times as he may fix. Said superintendent shall be empowered to ascertain and publish information Visitation by superintendent public instruction. See §502.

Condition of Corporation.

upon all matters pertaining to the condition, management, instruction and practices of the corporation; and upon evidence that the property is at any time less than is required by law, or that the corporation is not otherwise complying with the provisions of this act, he shall serve notice on the corporation to remedy the defects within a reasonable time to be fixed in such notice, and in case the deficiency is not corrected within the time fixed by him, he may institute proceedings at law for the dissolution of the corporation. Such trustees shall be required, on or before the first day of December, annually to report to the Superintendent of Public Instruction, a statement of the name of each trustee, officer, teacher and the number of students of such institution, with a statement of its property, the amount of stock subscribed, donated and bequeathed, and the amount actually paid in, and such other information as will tend to exhibit its condition and operations.

Reports.

Ante §§502 to 505.

CHAPTER 3

ECCLESIASTICAL CORPORATIONS

Subdivision 1.—General Provisions

Included organizations. See §506.

SECTION 1. (a) The provisions of this chapter shall apply to churches and societies founded upon new doctrines and beliefs as well as to those already established and practiced. The term "church" or "church corporation" as used in this chapter shall be construed to include any church, denominational unit, or church society, as the term is commonly used and understood, but shall not apply to such organizations as Sunday schools, Epworth Leagues, Young People's Unions, Bible classes, and similar societies, organized as subordinate to and affiliated with the parent churches;

Union of organizations.

(b) Whenever any number of churches or other corporations organized for religious purposes desire to unite in a central organization for the ac-

complishment of any common purpose they may incorporate such organization by severally adopting, at meetings specially called for the purpose, resolutions expressing their desire to become members of such corporation; and by filing duly attested copies of such resolutions together with a copy of the articles of such corporation, as in other cases of non-profit corporations.

Common fees

Ante §506.

SEC. 2. The articles of incorporation of any such ecclesiastical corporation shall be executed by the incorporators or persons duly designated thereunto and shall follow the form prescribed in this section, and contain such further statements as may be appropriate to each such corporation, as the law may direct or as the incorporators may deem necessary or advisable. Such form shall run as follows:

Articles. See §507.

"We, the undersigned, desiring to become incorporated under the provisions of Act No. ..... of the Public Acts of nineteen hundred twenty-one (namely, this act) do hereby make, execute and adopt the following articles of association, to-wit:

First, The name assumed by this corporation and by which it shall be known in law, is "The..... ..... church" (or other name which clearly indicates a religious society or association);

Second, The location of said church or society shall be in the ..... of..... county of ..... and state of Michigan;

Third, The time for which said corporation shall be created shall be .....;

Fourth, The members of said church or society shall worship and labor together according to the discipline, rules and usages of the ..... church in the United States of America (or other jurisdiction as the case may be), as from time to time authorized and declared by the ..... (here insert the name of the higher ecclesiastical body or bodies, if any, authorized to determine such question);

Fifth, And succeeding articles, if any, (containing in brief and concise language, such other and

further declarations or statements pertaining to such corporation, as may be deemed necessary or advisable by the incorporators, or as may be hereinafter prescribed).

In witness whereof, we, the parties hereby associating for the purpose of giving legal effect to these articles, hereunto sign our names and places of residence.

Done at the ..... of ....., county of ..... and state of Michigan, this ..... day of ....., 19...

(Signatures) (Residences)

....

(Acknowledgments).

(Consent if any required).

(Certificates, if any).

Ante §507.

Execution and filing of articles. See §508.

SEC. 3. Excepting as herein otherwise provided, such articles shall be executed, acknowledged, filed and disposed of in the same manner and with like effect as is prescribed in this act for corporations generally. Such articles may contain, among other things, specified in section two of this chapter, any provisions the incorporators may determine upon respecting the church polity or government, and the blank spaces provided for shall be filled in by words appropriate to the particular denomination or corporation being so incorporated.

Ante §§508, 509.

By-laws. See §510.

SEC. 4. Such church corporations shall have authority to adopt by-laws prescribing the qualifications of members; the manner in which they shall be admitted, suspended or expelled; the number and official titles of the person or persons who control the temporal affairs of the corporation; their terms of office; the manner of their selection and removal from office; their respective official duties; the time and manner of calling and holding church business meetings and the number of members constituting a quorum; how far the corporation shall be subject to the approval or control of

any other corporation or higher church body which corporation or body shall be named; the manner and condition under which property, both real and personal, may be acquired, held and disposed of; and such other by-laws as may be deemed necessary for the management of the affairs of such corporation. The by-laws may also prescribe how the same may be altered, amended or repealed.

Corporation or church body.

Ante §§510 to 514.

SEC. 5. The articles of any such corporation may be amended at any meeting of the members of the corporation called for that purpose pursuant to the by-laws, by the affirmative vote of a majority of the members entitled to vote thereon present at such meeting, unless a different majority is required by the rules of discipline or by the church policy in any particular case, and it shall be the duty of the person or persons controlling the temporal affairs of the corporation to make, sign and acknowledge in the same manner that the original articles were made, signed and acknowledged, triplicate copies of a certificate, containing the name of the corporation, a copy of the call for the meeting at which the amendment was made, the number of members present at such meeting, the number of members voting in favor of the amendment and a copy of the amendment; and such certificate of amendment shall be filed in the same manner that the original articles were filed, and upon such filing the amendment shall be effective: *Provided,* That where the system of discipline or polity in any particular denomination or church requires the action, consent or vote of a conference, conclave or synod, presbytery or other body, or the approval of certain officers of such conference or other body or of a bishop or other hierarchical officer, to such amendments, then all such amendments shall be made in conformity to such practice and requirements and shall in all other respects conform to the customs, usages, beliefs, and discipline of the particular church body concerned.

Amendment of articles.

See §515.

Ante §515.

Subsidiary organizations. See §516.

SEC. 6. In the case of incorporating a Sunday school society, or other special religious society or union, not being a church, but having for its object the teaching of religious principles, or the associating together for religious work, the incorporators shall subscribe articles similar to those prescribed for non-profit corporations generally, which articles shall also contain any special conditions or distinguishing principles upon which such corporation is founded, and, if connected with some organized church, the name of the church and a statement of the extent to which such church may exercise superintendence over the affairs of or discipline of the members of such Sunday school or other corporation. The corporations referred to in this section as Sunday schools or special religious societies, shall have all the rights, privileges, immunities and powers granted by this act to non-profit corporations generally in their secular affairs; and in their religious affairs they shall be governed solely by their articles and by-laws, and the system of discipline therein adopted.

Ante §516.

Power to hold property. See §517.

SEC. 7. Where no other special provision inconsistent herewith is made in this chapter, every such church corporation shall have power to acquire, hold, sell and convey property, both real and personal for the general purposes of such corporation and it may recover and hold the debts, demands, rights, privileges and all property, whether real or personal, of whatever sort it may be, belonging or appertaining to said church, in whatever manner the same may have been acquired, and in whose hands soever the same may be held, the same as if the right and title had originally been vested in said corporation. The board of trustees may authorize certain of the officers of said board to affix the corporate name and the seal of the corporation, and to execute and attest conveyances, notes, obligations, acquittances and all other necessary legal documents. It may sell, mortgage and dispose of its personal property; and may mortgage and incumber its real estate. It may acquire real estate by

Mortgages.

gift, purchase or devise for the purpose of having and holding land and buildings for its own use and occupancy, including a pastor's residence, a church cemetery, church and Sunday school buildings and grounds and church society buildings and grounds, and may sell or mortgage such real estate; shall have and enjoy all the rights, privileges and immunities, so far as any church cemetery owned by it is concerned, which corporations organized to establish rural cemeteries have and enjoy under the laws of this state: *Provided,* That the right to sell, convey or mortgage such real property shall be subject to such restrictions and conditions as may be prescribed by the rules of discipline, articles or by-laws pertaining to each such corporation: And *provided further,* That every such church corporation insofar as it holds any property in trust for religious, charitable, benevolent, educational or social purposes, shall be deemed to be a trustee corporation within the meaning of this act and governed by the provisions of chapter one of this part, excepting as herein otherwise provided.

Real estate by gift.

Property in trust.

Ante §§517 to 519.

SEC. 8. Any religious society or church incorporated under any law of this state may receive, hold, and use gifts or bequests of money or other property for any special religious, benevolent, charitable, educational, social or other purpose enterprise or project connected with such church or society or may receive such gifts or bequests to be by such society or church invested in whole or in part in the name of such society or church, the net income therefrom to be by such society or church used for any of said purposes, according to the terms of such gifts or bequests. All real estate so received and not used by such society or church for any of such purposes shall by such society or church be sold within ten years and the proceeds therefrom shall be used or invested according to the terms of such gift or bequest. All such investments made by such society or church shall be in such real estate, mortgages or bonds, as may at the time be authorized by the laws of this state or by

Gifts and bequests.

See §520.

Unused real estate.

Investments.

the laws of the United States of America for the investment of savings deposits of incorporated banks. The trustees, vestrymen, consistory, or other governing body of any religious society incorporated under the laws of this state, may in their corporate name receive gifts and bequests of money for investment upon bond and mortgage when the interest of such investment is to be applied in payment or part payment of the salary of the minister, priest, rector, parson or clergyman of such religious society: *Provided,* That sums of money, mortgages or investments so held by any such society shall be invested by the trustees, vestrymen, consistory, or other governing body, in their corporate name, upon bonds secured by mortgage upon unincumbered real estate, worth at least double the amount loaned thereon.

Ante §§520 to 524.

Saving clause.

See §525.

SEC. 9. Nothing in this chapter contained shall be construed as limiting or restricting the rights, powers, privileges, immunities or the practices of any church heretofore established or incorporated under any law of this state; nor as requiring any such church to alter or change any rule of discipline, custom or usage in respect of its church policy or government; nor as interfering with the lawful acquisition, use or disposition of any property now owned or held by any such church corporation. The provisions of this chapter shall be liberally construed in the interests of religion and morality.

Ante §§525, 526.

PART V

FOREIGN CORPORATIONS, REPORTS AND SCHEDULES OF REPEALS

CHAPTER 1

FOREIGN CORPORATIONS

Domestication. See §527.

SECTION 1. It shall be unlawful for any corporation organized under the laws of any state, district or territory of the United States, except the state of Michigan, or of any foreign country, to carry on its business in this state, until it shall have procured from the Secretary of State of this state a certificate of authority for that purpose. To procure such certificate of authority every such foreign corporation or association shall comply with the following provisions: It shall file in the office of the Secretary of State a certified copy of its charter, or articles of incorporation, and file evidence of appointment of an agent in this state to accept service of process on behalf of said corporation, and shall pay to the Secretary of State the filing, and franchise fees prescribed by law. Such corporation, by its president, secretary, treasurer and superintendent, or any two of them, shall make and file with the Secretary of State a statement duly sworn to by at least two of such officers, in such form as the Secretary of State may prescribe, containing the following facts:

First, The location of its principal office and its principal place or places of business, and the names and addresses of its principal officers;

Second, The location of its principal office and the principal place of business in Michigan, and the

Name and address.

name and addresses of the officers or agent of the company in charge of its business in Michigan;

Third, The total value of the property owned and used by the company in its business, giving its location and general character and stating separately the value of its tangible property, of its cash and credits, its franchises, patents, trade-marks, formulas and good will;

Fourth, The value of the property owned and used in Michigan and where situated;

Fifth, The total amount of business transacted during the preceding year and the amount of business, if any, transacted in Michigan;

Sixth, Such other facts bearing on the matter as the Secretary of State may require, including a statement of the particular purpose, or the particular kind of business for which the company desires admission to this state. From the papers so filed and the facts so reported and any other facts coming to his knowledge bearing upon the question, the Secretary of State shall compute and determine the amount of the franchise fee to be paid by such corporation before its admission to this state, as prescribed by law. Any such corporation shall have the right, on application, to be heard by the Secretary of State touching the matter of the determination of such franchise fee. Any corporation aggrieved by the decision of the Secretary of State, may, within ten days, appeal to a board of appeal, consisting of the Auditor General, State Treasurer and Attorney General, whose decision in the matter shall be final.

Franchise fee.

Appeal.

Ante §§527 to 539.

Certificate of authority.

See §540.

SEC. 2. When such corporation has fully complied with the provisions of this act, the Secretary of State may issue to such corporation a certificate of authority to carry on such business in this state for one year, and from year to year thereafter during the period of its corporate existence so long as the said corporation continues to pay its franchise fee and to otherwise comply with the laws of this state: *Provided*, That no such foreign corporation shall be permitted to transact business in this state,

Forbidden objects.

unless it be incorporated in whole or in part for the purpose or object for which a corporation may be formed under the laws of Michigan, and then only for such purpose or object. The Secretary of State shall in the certificate which he issues state the act or section of this act containing such purposes and such corporation shall have all the powers, rights, and privileges and be subject to all the restrictions, requirements and duties granted to or imposed upon corporations organized under such act or section; and the officers and directors of every such corporation shall be subject to all such requirements and duties as are imposed upon officers and directors of domestic corporations organized under such act or section, and shall be subject to the same penalties and liabilities for failure to perform any duties imposed by such act as are the officers and directors of domestic corporations organized thereunder: *Provided*, That the carrying on in this state by such corporation of business for which it has not been so admitted or failure to fully comply with the requirements of the laws of this state shall be sufficient cause for revoking the certificate of authority to do business in this state, and the Secretary of State may revoke such certificate and shall promptly notify such corporation of such revocation and the reasons therefor by notice sent by mail to the home office of such corporation. All foreign corporations, including also common carriers, heretofore or hereafter admitted to this state shall be deemed to be admitted under and be subject to the provisions of this act: *Provided, however,* That nothing in this chapter contained shall be construed as exempting any foreign corporation from complying with any law bringing it under the jurisdiction of the Michigan Public Utilities Commission for any purpose.

Designation of controlling law.

Abuse of privileges.

Revocation of license.

Ante §§540 to 544.

SEC. 3. Every corporation which has paid a franchise free and been admitted to do business in this state, which shall thereafter increase its authorized capital, or shall increase the proportion of its capital stock, represented by property used and business done in Michigan, shall within thirty days

Increase of capital.

See §545.

after such increase file an additional statement in respect thereto with the Secretary of States and pay such additional franchise fee on account thereof as may be prescribed by law. And any such corporation shall at any time when requested by the Secretary of State, file an additional statement under oath of at least two of its officers, showing the proportion of its property used and business transacted in Michigan. Every corporation subject to the provisions of this chapter which shall neglect or fail to comply with its requirements, shall be subject to a penalty of not less than one hundred dollars nor more than one thousand dollars for every month that it continues to transact business in Michigan, without complying with the requirements of this act, to be recovered by action in the name of the people of the state of Michigan in any court of competent jurisdiction. No foreign corporation shall be capable of making a valid contract in this state until it shall have fully complied with the requirements of the laws of this state with respect thereto, and at the time holds an unrevoked certificate to that effect from the Secretary of State. No such corporation having appointed an agent to accept service of process shall have power to revoke or annul such appointment until it shall have filed notice of appointment of some other person in this state as such agent.

Additional statement.

Penalty for non-compliance.

Removal of agent.

Ante §§545 to 547.

SEC. 4. It shall be unlawful for any person to act as agent for any foreign corporation not authorized to do business in this state or in any manner to aid in the transaction of the business of such unauthorized foreign corporation in this state. Any person violating the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by a fine of not less than fifty dollars, nor more than five hundred dollars for each offense, and in default of payment of such fine, shall be imprisoned in the county jail for a period of not less than thirty days nor more than one year, or he may be punished by both such fine and imprisonment at the discretion of the court.

Penalty for aiding unauthorized foreign corporation.

See §548.

Ante §§548 to 550.

Exclusions and inclusions. See §551.

SEC. 5. The provisions of this chapter shall not be applicable to such foreign corporations as are permitted to do business in this state by license issued by the Commissioner of Insurance, according to the provisions of law. The term "corporations" as used in this chapter shall be construed to include all associations, partnership associations and joint stock companies having any of the powers or privileges of corporations, not possessed by individuals or partnerships, under whatever term or designation they may be defined and known in the state where organized. Foreign corporations organized not for pecuniary profit may be admitted to carry on their lawful business within this state upon the same terms and under the same restrictions as apply to similar non-profit corporations organized under the laws of Michigan, and upon paying the same filing, privilege and other fees as are prescribed by law for similar domestic corporations.

Ante §§551, 552.

CHAPTER 2

ANNUAL AND OTHER CORPORATION REPORTS

(See Act No. 85 of 1921)

Reports of corporations not hitherto reporting. See §553.

SECTION 1. Every corporation heretofore incorporated under any law of this state, and now in existence, which by the law, under which incorporated was not required to make or file an annual report, or which was required only to make such report as might be required by the Attorney General of this state from time to time, or whose articles were not required to be filed with the Secretary of State, shall, on or before the first day of January, nineteen hundred twenty-two, make and file with the Secretary of State a report showing the name of such corporation, the location of its principal office, the term for which incorporated, the act under which incorporated or re-incorporated, the names and residences of its officers and directors, the purposes of such corporation, its authorized capital stock, if any, and the inventoried value

Property at time of filing.

of all property held or owned by such corporation at the time of filing such report. It shall be the duty of the directors or trustees of every such corporation to make and file the report herein required, and upon such form as may be prescribed by the Secretary of State. The Secretary of State shall make an index of all of the reports filed pursuant to this section, and file all such reports along with the other corporation records in his office. This section shall not be construed as applying to corporations filing articles or reports with the Insurance Department or the Banking Department, or with the Michigan Public Utilities Commission, but shall include all other corporations otherwise exempted under the provisions of section eight of chapter one, part one, of this act.

Ante §§553, 554.

Reports non-profit companies.

See §555.

SEC. 2. All domestic corporations of whatsoever nature whose purposes and objects do not include business for pecuniary profits, including those organized under act number one hundred seventy-one of the Public Acts of nineteen hundred three, all ecclesiastical and educational corporations, all such corporations of the nature embraced in chapters two and three of part three of this act, and all corporations referred to in section one of this chapter and all trustee corporations operating not for profit, shall file a report with the Secretary of State, similar to that required in section one hereof, in the year nineteen hundred twenty-four and every third year after. Such reports shall be filed in the months of July or August of the year in which filed.

Ante §555.

Officers to furnish information.

See §556.

Filing fee.

SEC. 3. The Secretary of State may call upon the several county clerks or registers of deeds, for any information respecting the corporations referred to in the foregoing sections, and such officers shall furnish such information as may be so demanded. With every report forwarded to the Secretary of State pursuant to sections one and two of this chapter, the corporation forwarding the same shall also send a filing fee of two dollars,

which fees when received shall be deposited in the state treasury and credited to the general fund of the state.

Ante §556.

Place of filing. See §557.

SEC. 4. Hereafter it shall not be necessary for any corporation to file its by-laws with any county clerk. All articles, amendments thereto, and annual or other periodic reports of corporations shall be originally filed with the Secretary of State, and copies thereof shall be prepared by the corporation itself in each instance to be certified by the Secretary of State and forwarded for filing in the office of the county clerk of the county where such corporation has its principal office or place of business. The county clerks shall keep their corporation records and files in such manner and form as to readily show the proper classification to which each corporation belongs, alphabetically arranged as to names and other indexing.

Ante §557.

Time of filing. See §558.

SEC. 5. Every corporation organized for pecuniary profit, including every foreign corporation admitted to carry on business in this state, shall annually, in the month of July or August, make duplicate reports showing the condition of such corporation on the thirtieth day of June, next preceding, on suitable blanks to be furnished by the Secretary of State, as hereinafter provided. Such report shall furnish the Secretary of State with all information and facts necessary for the computation of the annual franchise fee provided for by law. The Secretary of State is hereby authorized to require of any corporation any additional information that may be needed after the filing of its annual report for the purpose of computing such fee. Such report shall state the amount each of common and preferred capital stock authorized, and the amount thereof, subscribed for, and the amount thereof actually paid in cash, and the amount thereof paid in property; the total value as near as may be estimated of all property owned by the corporation; the value of different items or classes of

Subject matter of report.

Property.

property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material and other tangible property; patent rights, trade-marks and formulas; good will; and all other property including surplus, reserve funds and sinking funds, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each officer and director of the corporation, and such other information as the Secretary of State may require. It shall be the duty of the Secretary of State on application of such corporation to mail to each corporation which is subject to the provisions of this act, suitable blanks for making the reports and returns required by law. Such reports shall be signed by president or vice-president of the corporation and the secretary or assistant secretary of the corporation and verified by the oath of the secretary of the corporation, and deposited in the office of the Secretary of State within the said month of July or August, or within sixty days after the close of such fiscal year, accompanied by a filing fee of two dollars, and the amount of the annual franchise fee provided by law; such filing fees when received shall daily be covered into the state treasury and there credited to the general fund of the state.

Blanks.

Verification.

Ante §558.

Examination and filing.

See §559.

SEC. 6. The Secretary of State shall carefully examine all such reports, and if upon such examination they shall be found to comply with all the requirements of this chapter, he shall then file one of them in his office, and shall forward the other by mail or express to the county clerk of the county in which the office in this state for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same to be filed in his office. If any corporation neglects or refuses to make and file the reports required by this chapter within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be

Penalties for non-filing.

suspended thereafter, until it shall file such report, and it shall not maintain an action in any court of this state upon any contract entered into during the time of such default; and any director or trustee of such corporation so in default, who has neglected or refused to join in the making of such report shall be liable for all debts of such corporation contracted during the period of such neglect or refusal, and shall also be liable to such corporation for any damages sustained by it by reason of such refusal or neglect. Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this chapter, the Secretary of State shall cause notice of that fact to be given by mail to such corporation, directed to its postoffice address. The certificate of the Secretary of State or his deputy, of the mailing of such notice, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said corporation. All actions and suits based on the neglect or refusal of the officers or directors of such corporation to make and file the reports required by this section shall be commenced within two years after such neglect or refusal has occurred and not afterwards.

Suspension.

Notice of default.

Limitation of actions.

Ante §§559 to 568.

CHAPTER 3

SCHEDULE OF REPEALS, AND SAVING CLAUSES

SECTION 1. The following acts, and all acts and parts of acts amendatory thereto, are hereby repealed, namely:

Acts repealed.
See §569.

Act number one hundred twenty-two of the Public Acts of eighteen hundred seventy-seven; act number one hundred fifty-eight of the Public Acts of eighteen hundred eighty-three; act number eleven of the Public Acts of eighteen hundred ninety-five; act number seventy-three of the Public Acts of eighteen hundred sixty-nine; act number two hundred twelve of the Public Acts of eighteen hundred sixty-one; act number one hundred

Acts repealed—Continued.

sixty-nine of the Public Acts of eighteen hundred seventy-nine; act number fifty-eight of the Public Acts of eighteen hundred seventy-seven; act number seventy-five of the Public Acts of eighteen hundred eighty-seven; act number fifty-six of the Public Acts of eighteen hundred ninety-one; act number one hundred seven of the Public Acts of eighteen hundred eighty-one; act number one hundred seventeen of the Public Acts of eighteen hundred fifty-five; act number twenty-two of the Public Acts of eighteen hundred eighty-three; act number sixty-four of the Public Acts of nineteen hundred five; act number sixteen of the Public Acts of eighteen hundred sixty-nine; act number eight of Public Acts of eighteen hundred sixty-seven; act number seventy-six of the Public Acts of eighteen hundred eighty-three; act number one hundred fifteen of the Public Acts of eighteen hundred eighty-nine; act number fifty-four of the Public Acts of eighteen hundred seventy-seven; act number one hundred sixty-seven of the Public Acts of eighteen hundred eighty-nine; act number ninety-seven of the Public Acts of eighteen hundred ninety-seven; act number twenty-seven of the Public Acts of eighteen hundred eighty-two; act number eighty-five of the Public Acts of eighteen hundred ninety-three; act number sixty-seven of the Public Acts of eighteen hundred ninety-five; act number eighty-two of the Public Acts of eighteen hundred ninety-seven; act number one hundred ninety-two of the Public Acts of eighteen hundred eighty-three; act number one hundred four of the Public Acts of eighteen hundred sixty-nine; act number seventy-three of the Public Acts of eighteen hundred seventy-nine; act number forty-eight of the Public Acts of eighteen hundred eighty-three; act number one hundred seventeen of the Public Acts of eighteen hundred fifty-one; act number eighty-three of the Public Acts of eighteen hundred fifty-one; act number forty of the Public Acts of eighteen hundred fifty-five; act number sixteen of the Public Acts of eighteen hundred sixty-four; act number sixty-two of the Public Acts of eighteen hundred forty-eight; act num-

Acts repealed—Continued.

ber one hundred fifty-five of the Public Acts of eighteen hundred fifty-one; act number one hundred twenty-two of the Public Acts of eighteen hundred fifty-five; act number one hundred fifty-three of the Public Acts of eighteen hundred ninety-one; act number one hundred sixty-six of the Public Acts of eighteen hundred sixty-three; act number two hundred thirty-nine of the Public Acts of eighteen hundred seventy-nine; act number one hundred ninety of the Public Acts of eighteen hundred eighty-seven; act number two hundred ninety-nine of the Public Acts of eighteen hundred eighty-seven; act number one hundred thirteen of the Public Acts of eighteen hundred seventy-seven; act number one hundred forty-two of the Public Acts of eighteen hundred eighty-nine; act number two hundred thirty-two of the Public Acts of nineteen hundred three; act number one hundred seventy-one of the Public Acts of nineteen hundred three; act number two hundred six of the Public Acts of nineteen hundred one; act number one hundred twenty of the Public Acts of eighteen hundred seventy-seven; act number one hundred sixty-seven of the Public Acts of nineteen hundred seven; act number sixteen of the Public Acts of eighteen hundred eighty-two; act number thirty-nine of the Public Acts of eighteen hundred fifty-five; act number two hundred thirty-one of the Public Acts of nineteen hundred eleven; act number three hundred fifty-nine of the Public Acts of nineteen hundred thirteen; act number nineteen of the Public Acts of eighteen hundred thirty-nine; act number one hundred ninety-one of the Public Acts of eighteen hundred ninety-three; act number one hundred sixty of the Public Acts of eighteen hundred ninety-five; act number two hundred of the Public Acts of eighteen hundred ninety-seven; act number ninety-five of the Public Acts of eighteen hundred sixty-nine; act number one hundred fifty-six of the Public Acts of eighteen hundred seventy-three; act number twenty-nine of the Public Acts of eighteen hundred ninety-nine; act number two hundred thirty-two of the Public Acts of eighteen hundred eighty-seven; act number one

Acts repealed—Continued.

hundred twenty-eight of the Public Acts of eighteen hundred fifty-seven; act number one hundred fifty-five of the Public Acts of eighteen hundred seventy-nine; act number one hundred sixty-six of the Public Acts of eighteen hundred ninety-nine; act number twenty of the Public Acts of eighteen hundred fifty-five; act number fifty-two of the Public Acts of eighteen hundred ninety-seven; act number one hundred thirty-five of the Public Acts of eighteen hundred sixty-seven; act number two hundred forty-two of the Public Acts of eighteen hundred sixty-three; act number three hundred eight of the Public Acts of nineteen hundred seven; act number two hundred nine of the Public Acts of eighteen hundred ninety-seven; act number one hundred ten of the Public Acts of eighteen hundred eighty-nine; act number one hundred thirteen of the Public Acts of eighteen hundred eighty-seven; act number eighty-nine of the Public Acts of nineteen hundred one; act number one hundred forty-one of the Public Acts of nineteen hundred five; act number two hundred fifty-six of the Public Acts of nineteen hundred three; act number seventy-four of the Public Acts of eighteen hundred ninety-five; act number thirty-one of the Public Acts of eighteen hundred ninety-seven; act number two hundred sixty-eight of the Public Acts of eighteen hundred eighty-one; act number three hundred fifteen of the Public Acts of eighteen hundred eighty-seven; act number ninety-six of the Public Acts of eighteen hundred seventy-one; act number two hundred eighty-eight of the Public Acts of eighteen hundred sixty-five; act number three hundred ninety-eight of the Public Acts of nineteen hundred thirteen; act number ninety-seven of the Public Acts of eighteen hundred ninety-seven; act number two hundred thirty-three of the Public Acts of eighteen hundred sixty-five; act number three of the Public Acts of eighteen hundred eighty-five; act number two hundred forty-five of the Public Acts of nineteen hundred thirteen; act number one hundred thirty-five of the Public Acts of eighteen hundred ninety-nine; act number one hundred twenty-one of the Public Acts of nineteen

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Acts repealed—Continued.

Ante §§569 to 670.

SEC. 2. All such corporations, whose act of incorporation is repealed by this act, heretofore organized and incorporated under or subject to the laws of this state, shall hereafter be subject to the provisions of this act without formal reorganization hereunder; but each such corporation shall have, under its existing charter or corporate franchise, all of the powers, rights, privileges and immunities granted and conferred upon it by the law under which such corporation was incorporated, and notwithstanding such law may be repealed by this act; and nothing in this act contained shall be taken or construed to limit, restrict, or modify any such corporation in the exercise of its existing powers, rights, privileges or franchises, or as working a change upon its manner of operating, or as

Existing corporations subject to this act.
See §671.

Old rights preserved.

Amendments may have advantages of old laws.

imposing any new mode of operation upon any such existing corporation. In all cases the charter, articles and by-laws of each such corporation as existing at the time this act takes effect may be altered or amended to include any right, power or privilege or as to any matter, subject or thing provided for in such law under which such existing corporation was organized, and no such amendment or alteration shall be deemed to be unlawful because inconsistent with or not expressly covered by the provisions of this act: *Provided, however,* That upon reorganization, or upon renewing any corporate term, such reorganization and such renewal shall be accomplished only in the manner, and under the limitations and restrictions imposed by the provisions of this act.

Reorganizations and renewals must be under this act.

This act is ordered to take immediate effect.

Approved April 26, 1921.

Ante §§671, 672.

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APPENDIX B

THE PRIOR STATUTE RELATING TO MANUFACTURING AND MERCANTILE CORPORATIONS.

(Act No. 232 Public Acts 1903, as amended; 2 C. L. 1915, (9017) et seq. and subsequent amendatory acts.)

Title of the Act.

(9017). Purposes for which may incorporate
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Although Act No. 84 Public Acts 1921 expressly repealed Act No. 232 Public Acts 1903, and all acts and parts of acts amendatory thereof, the following saving clause (see §671) in the act of 1921 makes Act 232 of 1903 of some further importance.

Section 2, Chapter 3, Part V of P. A. '21, Act No. 84 provides:

All such corporations, whose act of incorporation is repealed by this Act, heretofore organized and incorporated under or subject to the laws of this State, shall hereafter be subject to the provisions of this act without formal reorganization hereunder; but each such corporation shall have, under its existing charter or corporate franchise, all of the powers, rights, privileges and immunities granted and conferred upon it by the law under which such corporation was incorporated, and notwithstanding such law may be repealed by this act; and nothing in this act contained shall be taken or construed to limit, restrict, or modify any such corporation in the exercise of its existing powers, rights, privileges or franchises, or as working a change upon its manner of operating, or as imposing any new mode of operation upon any such existing corporation.

See ante §671.

TITLE TO THE MANUFACTURING AND MERCANTILE ACT

Title

AN ACT to revise and consolidate the laws providing for the incorporation of manufacturing and mercantile companies or any union of the two, and for the incorporation of companies for carrying on any other lawful business, except such as are precluded from organization under this act by its express provisions, and to prescribe the powers and fix the duties and liabilities of such corporations.

Notes to Title.

The title does not offend constitutional requirements. Grimm v. Secretary of State, 137 Mich. 134 (1904). It was within the constitutional power of the legislature to make preexisting corporations subject to this act. Deloria v. Atkins, 158 Mich. 232, 239 (1909). The title relates to domestic corporations only. Foreign corporations are not within its scope. Young v. Moore, 162 Mich. 60, 62 (1910). But the rights, duties and obligations of domestic corporations under this act may be extended to foreign corporations. Republic Motor Truck Co. v. The Buda Co. 212 Mich. 55 (1920); Yund v. Excelsior Wrapper Co., 185 Mich. 143 (1915).

Mich. C. L. '15, (9017), Section 1.

The People of the State of Michigan enact:

Purposes for which may incorporate.

Section 1. Any three or more persons desiring to become incorporated for the purpose of carrying on any manufacturing or mercantile business, or any union of the two, or for buying, selling and breeding cattle, sheep and horses, or other live stock, or for engaging in maritime commerce or navigation, or for the purchasing, holding and dealing in real estate, or for conducting a warehouse and storage business, or for erecting and owning buildings to be occupied or leased for dwelling houses, halls, or business purposes, or for the production and supplying of gas and electricity for lighting, fuel or other purposes, or for printing, publishing and book-making, or for carrying on any other lawful business, except such as are excluded by section thirty-six of this act, may, by complying with the provisions of this act, with their successors and assigns, become a body politic and corporate.
2 C. L. 1915 (9017).

Notes to Section 1.

Where less than three persons own all of the stock the corporate powers are in suspension until the statutory membership is restored. Land v. Lundy, 185 Mich. 390, 399 (1915).

Departmental construction of the act over a considerable period of time will be respected by the courts. Attorney General v. Buckley & Douglas Lumber Co., 164 Mich. 625, 637 (1911).

(9018) as amended, Sec. 2.

Articles of Association.

Sec. 2. The articles of association of every such corporation shall be made on suitable and uniform blanks which it is hereby made the duty of the Secretary of State to furnish on application free of charge, or upon blanks substantially uniform approved by the Secretary of State, which articles shall be signed by the persons associating in the first instance and acknowledged before some person authorized by the laws of this State to take acknowledgements of deeds, and shall state:

Blanks, who to furnish, etc.

Name. Proviso.

First, The name assumed and by which the corporation shall be know (known) in law: *Provided,*

No name shall be assumed already in use by any other existing corporation of this State, or corporation lawfully carrying on business in this State, or so nearly similar as to lead to uncertainty or confusion;

Purposes.

Second, Distinctly and definitely, the purpose or purposes for which the corporation is formed, and it shall not be lawful for said corporation to divert its operations, or appropriate its funds to any other purpose, except as hereinafter provided;

Place of business. Capital stock.

Third, The principal place or places at which its operations are to be conducted;

Fourth, The amount of the total authorized capital stock which shall not be less than one thousand dollars nor more than *fifty million* dollars; the amount of capital stock subscribed, which shall not be less than fifty per cent of the authorized capital stock; the articles may provide for common and preferred stock subject to section thirty-five, and in that case shall contain an exact statement of the terms upon which the common and preferred stocks are created, and the amount of each subscribed, and the amount of each paid in;

Shares.

Fifth, The number of shares into which the capital stock is divided, which shall be of the par value of ten dollars, or one hundred dollars each;

Amount paid in.

Sixth, The amount of capital stock paid in at the time of executing the articles, which shall not be less than ten per cent of the authorized capital, and in no case less than one thousand dollars, except in a case of a capitalization of two thousand dollars or under, when it shall be twenty-five per cent thereof, and the amount so paid in shall not be reduced below such per cent of its capital. Such capital stock may be paid in, either in cash or in other property, real or personal; but where payment is made otherwise than in cash there shall be included in the articles an itemized description of the property in which such payment is made, with the valuation at which each item is taken, which valuation shall be conclusive in absence of actual fraud: *Provided,* That only such property shall be so taken in payment for capital stock as the purposes of the corporation shall require, and only such property as can be sold and

Description of property.

transferred by the corporation, and as shall be subject to levy and sale on execution, or other process issued out of any court having competent jurisdiction, for the satisfaction of any judgment or decree against such corporation: And *provided further,* That there shall be made and attached to any such articles of association an affidavit by at least three of the organizers of such corporation, that they know the property described in such articles of association and that the same has been actually transferred to such corporation, and that such property is of the actual value therein stated; Further proviso.

Seventh, The place in the State of Michigan where the office of the company is located; Office in state.

Eighth, The term of years the corporation is to exist, which shall not be to exceed thirty years; Term of existence.

Ninth, The names of the stockholders, their respective residences, and the number of shares subscribed for by each. The amount of the capital stock and number of shares of every corporation organized under this act may be increased or diminished at any annual meeting of the stockholders, or at a special meeting expressly called for that purpose, by a vote of two-thirds of the capital stock of the corporation. In voting upon the increase of the capital stock, the stockholders shall have power, by the same statutory majority, to fix the value of, and the price at which, the increase of the capital shall be subscribed and paid for by the stockholders, but not less than par, as well as the time and manner of the subscription and payment, and by the same vote to authorize the directors of the corporation to sell, at not less than the price so fixed, any part of such increase not subscribed by the stockholders, after they have had a reasonable opportunity to make subscription of their proportionate shares thereof; and to make provision for calling in and canceling the old and issuing new certificates of stock; but nothing herein contained shall in any way operate to discharge any company, which may diminish its capital stock, from any obligation or demand that may be due from said company. When a corporation shall so increase or diminish its capital stock, the president and a majority of the directors shall make Stockholders. Capital stock, how increased or diminished. Vote upon increase. Sale of increased stock Certificate.

a certificate thereof, which shall be signed by them and recorded and returned as provided herein for recording and returning the original articles of incorporation, and such increase or diminution shall commence and be operative from the date when such certificate is recorded in the office of the Secretary of State: *Provided,* That in order to entitle such certificate to be recorded it must show that at least fifty per cent of the total authorized stock, after such increase has been subscribed, and that at least ten per cent of the total authorized capital has been actually paid in. The articles of *association,* besides defining the purposes for which the corporation is formed, as provided in sub-section second above, may also contain any provision which the incorporators may deem advantageous for the regulation of the business and for the conduct of the affairs of the corporation and any provision creating, defining, limiting and regulating the powers of the corporation, *and of* the directors and *the rights and privileges of* the stockholders or any class or classes of stock and stockholders, *including provisions for the better security of preferred stockholders, for the creating of a sinking fund for retirement of preferred stock, limiting increases of preferred stock without the assenting vote of all or a certain proportion of the owners of the preferred stock from time to time outstanding (but in no case less than three-fourths of the outstanding stock as provided in section thirty-five of this act), and prescribing and limiting the rights of preferred stockholders to subscribe for increase of stock: Provided, however,* That such provisions are not inconsistent with this act or the general statutes of this State regulating corporations.

How recorded, etc.

Proviso

Articles, other provisions to contain.

Proviso.

2 C. L. '15, (9018), as amended by P. A. '17, Act No. 254, the added matter being shown by the use of italics.

Notes to Section 2.

Blanks. Typewritten articles were permitted, provided they followed the official form.

Acknowledgment. For form of acknowledgment to be used in cases where articles have been executed by an attorney-in-fact see 3 C. L. 1915 (11755). A notary public cannot take the acknowledgment of articles wherein he is named as a party to the instrument. 1 C. L. '15, (2503).

Notes to Section 2—Continued.

Name. As to conflict of names see Young & Chaffee Furniture Co. v. Chaffee Brothers Furniture Co., 204 Mich. 293 (1918), and cases there cited.

One may be estopped from using his own name as a part of the name of a corporation. Id.

See also ante §§68, 69, 70, 71.

Purposes. The purposes of a corporation are to be determined from the statement expressed in its articles. Detroit Driving Club v. Fitzgerald, 109 Mich. 670, 675 (1896); Attorney General v. Lorman, 59 Mich. 157, 162 (1886); Van Etten v. Eaton, 19 Mich. 186, 194 (1869). But the expressed purposes carry with them such incidents as are necessary or useful in their attainment. Duluth, South Shore & Atlantic R. Co. v. Wilson, 200 Mich. 313, 322 (1918); Timm v. Grand Rapids Brewing Co., 160 Mich. 371, 373 (1910).

See ante §§73, 74, 75.

Place of Operation. See ante §76.

Capital Stock. Act 232 of 1903, as originally enacted, limited the capital to $25,000,000. The amendment of 1917 (Act 254) extended this limit to $50,000,000. Dodge v. Ford Motor Co., 204 Mich. 459, 461 (1919). Act. 84 of 1921 removes the limitation. See ante §79.

Subscription of 50% of the authorized capital was necessary to make articles or amendments eligible to record. Foote v. Greilick, 166 Mich. 636, 643 (1911). And it was required that 10% of the amount subscribed be paid in at the time of execution of the articles.

Under Act 84 of P. A. '21, the minimum authorized capital of stock corporations is $1,000; the articles must provide the amount to be subscribed and paid in before commencement of business; the amount paid in at the time of executing the articles must be at least 10% of the subscribed capital, and in no case less than $1,000, except where the authorized capital is $2,000, or under, in which event not less than 25% must be paid in. Ante §§264, 277.

At least as to creditors, one who purchases unissued stock of a corporation becomes obligated to pay par therefor. Utica Fire Alarm Telegraph Co. v. Waggoner Watchman Clock Co., 166 Mich. 618 (1911).

Classes of Stock. The old act limited stock to two classes—common and preferred. No class essentially different from that which was authorized could be created. Lufkin Rule Co. v. Secretary of State, 163 Mich. 30 (1910). The new act authorizes common stock, non-par stock (ante §290), industrial stock (ante §321), and preferred stock with such preferences as may be deemed advisable. Ante §264.

Par Value. Act 232 of 1903 required par value to be $10 or $100 per share. Act 84 of 1921 permits par value

Notes to Section 2—Continued.

to be $10, or some multiple of $10, or $25 or some multiple of $25, but not more than $100. Ante §264.

Stock Issued for Property. As to description of property in articles, see Brown v. Weeks, 195 Mich. 27 (1917). Issue of stock for property is presumed to be free from fraud. Id. See also Ante §§198, 199, 200, 201, 202, 278, 279, 280.

Sworn Statement of Value. See ante §§83, 84, 279.
Place of Business. See ante §77.
Term of Existence. See ante §89.
Amendments Increasing or Decreasing Capital Stock.

A two-thirds vote to increase capital stock, or a three-fourths vote (under Act 232 of 1903) to create a class of preferred stock, refers to stock outstanding, entitled to vote. Thus stock belonging to the corporation itself, even though held in the name of a trustee, would not be counted in the computation. Marshall Corp. p. 905; Continental Paint Co. v. Secretary of State, 128 Mich. 621 (1901). The minority stockholders have impliedly assented to the statute and are bound by it. Joy v. Jackson & Michigan Plank Road Co., 11 Mich. 155, 171 (1863).

Special Provisions. It is now well settled that the statutory permission to insert in the articles provisions "creating, defining, limiting and regulating powers" (taken from the General Corporation Act of New Jersey), does not delegate legislative power to the corporation. Audemrild v. East Coast Milling Co., 68 N. J. Equity, 450, 59 Atl. 577 (1904). The power to "create" is exclusively vested in the legislature. Such power cannot be delegated. Isle Royale Land Co. v. Osmon, 76 Mich., 163, 167 (1889). It follows that special provisions embodied in the articles, to be valid, must find support in some expression, or clear implication, of the act itself. See Walker v. Commissioner of Insurance, 103 Mich. 344, 346 (1894); Chapman v. Colby, 47 Mich. 46, 51 (1881); Town v. Bank of River Raisin, 2 Doug. (Mich.) 530, 547 (1847); Orr v. Lacey, Id. 230, 253 (1846); Bank of Michigan v. Niles, 1 Doug. (Mich.) 401, 403 (1844).

Act. 84 of P. A. '21, Part 1, Chap. 2, Sec. 4 (ante §116) reenacts substantially the same provision with reference to "creating, defining, limiting and regulating powers." But in this act far more latitude is given for exercise of the permission granted. Ante§§96, 97, 98, 99, 116, Nevertheless, the general principles above stated are controlling.

(9019), Sec. 3.

First meeting of stockholders, how may be called.

Sec. 3. When any number of persons shall have associated according to the provisions of this act, any two of them may call the first meeting of the

stockholders, at such time and place as they may appoint, by giving notice thereof by publshing the same in some newspaper published in the county in which its office is located, and if there is no newspaper published in such county, then by publishing the said notice in some newspaper published in an adjoining county, at least two weeks before the time appointed for such meeting. But said notice may be waived by a writing signed by all the subscribers to the capital stock of said corporation, specifying the time and place for said first meeting, which writing shall be entered at full length upon the records of the corporation; and the first meeting of any such corporation, which has been held pursuant to such written waiver of notice, shall be valid.

2 C. L. '15, (9019).

Notes to Section 3.

Notice. Due notice is "ordinarily presumed without proof." Foot v. Greilick, 166 Mich., 636, 641 (1911). Undelivered notice mailed to an address known by the mailing officer to be incorrect is no notice. Shaw v. Hehl, 189 Mich. 425, 430 (1915).

Under Act 84 of P. A. '21, officers may be elected either before or after filing the articles. In cases where the election precedes the filing, the practice of having the incorporators waive notice (though no longer required by statute) is deemed proper. See ante §123.

(9020), Sec. 4.

Corporation, how managed.

Sec. 4. The stock, property, affairs, and business of every manufacturing or mercantile corporation shall be managed by not less than three directors, who shall be chosen annually by the stockholders, at such time and place as shall be provided by the by-laws of said corporation, and who shall be stockholders, and shall hold their offices for one year, and until others shall be chosen in their stead.

2 C. L. '15 (9020).

Notes to Section 4.

The power of management vested in the board by this provision is very comprehensive. Report Attorney General (Bird) 1909, p. 139.

Act 84 of P. A. '21 (§203 ante) contains substantially the same provision. See ante §§204, 205.

Management having been confided to the board by the statute, even insolvency of the company does not of itself afford ground for judicial interference at the suit of a stockholder. Fuller v. McCormick, 156 Mich. 518, 521

Notes to Section 4—Continued.

(1909); Heap v. Heap Mfg. Co., 97 Mich. 147 (1893); Woodmansee v. Ann Arbor Brick Co., 165 Mich. 688 (1911). Courts will not interfere with the management of a board of directors, where the board is proceeding in good faith within the scope of its lawful powers. Dodge v. Ford Motor Co., 204 Mich. 459, 500 (1919); Hunter v. Roberts, Throp & Co., 83 Mich. 63, 71 (1890). But the same cases are authority for the proposition that, where the directors violate their fiduciary duties toward the corporation or its stockholders, equity may intervene. See also Town v. Duplex Power Car Co., 172 Cich. 519, 528 (1912); Torrey v. Toledo Portland Cement Co., 150 Mich. 86 (1907); Miner v. Belle Isle Ice Co., 93 Mich. 97, 112 (1892). See also ante §§54, 185.

The directors must be and remain stockholders. By ceasing to be a stockholder, a director vacates his office. This is equally true under Act 84 of 1921. See ante §§203, 208, 209, 210, 211, 212, 213, 214.

(9021), Sec. 5.

Failure to elect, not to dissolve.

Sec. 5. If an election of directors in any such corporation shall not take place at the annual meeting thereof, in any year, such corporation shall not thereby be dissolved, but an election may be had at any time thereafter to be fixed upon, and notice thereof to be given by the directors: *Provided,* That in case the directors shall refuse or neglect so to do, any three of the stockholders may call a meeting of the stockholders for the election of directors, by giving the notice as prescribed in section three of this act.

Proviso.

2 C. L. '15 (9021).

Notes to Section 5.

Directors holding over for want of election of successors are *de jure* directors and retain all of their original rights and powers. Kent County Agricultural Society v. Houseman 81 Mich. 609, 613 (1890); Cabill v. Kalamazoo Mutual Insurance Co., 2 Doug. (Mich.) 123, 140 (1845); 3 Fletcher Cyc. Corp. §1836, p. 3031; Marshall Corp. p. 923. For further citations see ante §215.

Act 84 of P. A. '21 contains substantially the same provision as to holding over. Ante §203.

(9022), Sec. 6.

Directors to elect officers.

Sec. 6. The board of directors shall elect one of their number to be president of the corporation and board, and one or more of their number to be vice president, and shall also choose a secretary and treasurer, and assistants if deemed necessary. The secretary and treasurer shall reside and transact the

corporation's business at its office within this state, unless the articles, or an amendment thereof duly made, provide for the location of the principal office of the corporation without this state. The directors shall appoint such other officers and agents as the by-laws of the corporation shall prescribe, who shall hold their offices according to their contracts, or until others are appointed in their stead. If the stockholders so direct the same person may hold the office of secretary and treasurer.

Directors—Continued.

2 C. L. '15 (9022).

The statute requires the secretary and treasurer to reside at the place of the corporation's principal office where such office is located within this state. At most this requirement is a mere duty to be performed; it is not a requisite to eligibility to hold these offices. While an officer might be removed for non-performance of the duty, he would remain—notwithstanding non-residence—a *de jure* officer until so removed. No authority directly in point is found; but see Detwiller v. Commonwealth, ex rel. Dickinson, 131 Pa. 614, 7 L. R. A. 357 (1890). Even though it were held that non-residence affected eligibility, the acts of a non-resident secretary or treasurer would bind the corporation as to third parties. 3 Fletcher Cyc. Corp. §1783, pp. 2980, 2981.

Notes to Section 6.

Act 84 of P. A. '21 contains similar residential requirements as to the secretary and treasurer. Ante §219. Indeed §6 of Act 232 of 1903 is the basis of §5, Chap. 1, Part 1 of Act 84 of 1921. The notes and citations following §219 ante are applicable to both acts.

As to president see ante §220.
As to vice-president, §221.
As to secretary, §222.
As to treasurer, §223.
As to officers who need not be stockholders, §224.
As to joinder of officers, §225.
As to executive committee, §227.

(9023), Sec. 7.

Sec. 7. The directors of such corporation shall have power to fill any vacancy which may happen in their board by death, resignation, or otherwise, for the current year.

May fill vacancies in board.

2 C. L. '15 (9023).

See ante §§ 236, 237, 238, 239, covering an almost identical provision of Act 84 of 1921.

(9024), Sec. 8.

Where may conduct business.

Sec. 8. It shall be lawful for any corporation organized or existing under the provisions of this act to conduct its business in whole or in part at any place or places within the United States or any foreign country.

2 C. L. '15 (9024).

Notes to Section 8.

In the absence of charter restrictions, a corporation may carry on any or all of its business outside the state where it was organized. When acting as a foreign corporation, its powers are measured by its charter and the limitations imposed by the foreign state. Thompson v. Waters, 25 Mich. 214 (1872); People v. Howard, 50 Mich. 239 (1883); Home Insurance Co. v. Davis, 29 Mich. 238 (1874).

As to companies operating in jurisdictions foreign to the state of their organization, see ante §§117, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 541, 542.

(9025), Sec. 9.

Articles to be recorded before commencing business.

Sec. 9. Before any corporation, organized under this act to operate in this state, shall commence business, the president shall cause the articles of association to be recorded, at the expense of said corporation, in the office of the secretary of state of this state, and in the office of the county clerk of the county in which such operations are to be carried on, and before any corporation organized hereunder, to operate outside this state, shall commence business, the president shall cause the articles of association to be recorded at the expense of the corporation, in the office of the secretary of state and in the office of the county clerk of the county in this state where the office of the corporation is located.

Transcripts of record, of what to be evidence.

The secretary of state and the county clerk, in whose office such articles of association shall be recorded, shall each certify upon every such articles of association recorded by him, the time when it was received, with a reference to the book and page where the name is recorded, and the record, or transcript of the record, certified by the secretary of state of this state, and under the seal thereof, shall be received in all the courts of this state as prima facie evidence of the due formation, existence and capacity of such corporation in any suit or proceedings brought by or against the same. And in case of companies organized under act number forty-

In case of companies filing articles.

one, laws of eighteen hundred and fifty-three and amendments thereto, and whose original articles of association and amendments are filed in the office of the secretary of state, copies of such articles of association or amendments duly authenticated by the secretary of state under the seal of the state, shall be received in all courts of this state as prima facie evidence of the things therein stated. Original Articles.

2 C. L. '15 (9025).

Notes to Section 9.

The statute contemplates the completion of the organization and the election of officers before the articles are sent to the secretary of state. Galvin v. Detroit Steering Wheel and Windshield Co., 176 Mich. 569, 574 (1913); Newcomb-Endicott Co. v. Fee, 167 Mich. 574 (1911). Persons who have dealt with a company as a corporation after its articles have been signed, but before they have been filed or recorded, cannot hold the incorporators liable as partners. Lockwood v. Wynkoop, 178 Mich. 388 (1914). But it has been held that a corporation is not estopped to deny its power to make a contract to pay for preorganization services, where the contract was made at a time when the opposite party knew that the corporation's organization franchise fee was unpaid. Wright v. St. Louis Sugar Co., 146 Mich. 555 (1906). This holding was under a franchise fee statute providing, that all contracts made by any corporation which has not first paid its franchise fee shall be "wholly void." 3 C. L. 1915, §11352. For cases involving a similar principle, see Hastings Industrial Co. v. Moran, 143 Mich. 679 (1906); Heffron v. Daly, 133 Mich. 613 (1913); Union Trust Co. v. Preston National Bank, 136 Mich. 460, 468 (1904); Rough v. Breitung, 117 Mich. 51 (1898).

Public utility corporations, both domestic and foreign, must obtain from the Michigan Public Utilities Commission a permissive order as a condition precedent to obtaining authority from the secretary of state to transact business. Peninsular Power Co. v. Secretary of State, 169 Mich. 595 (1912). As to jurisdiction of Michigan Public Utilities Commission, see Act No. 419, P. A. 1919; Act No. 381, P. A. 667; 2 C. L. 1915 (8161) et seq.; Pollitz v. Michigan Railroad Commission, 205 Mich. 549, 566, 567; Grand Rapids & Indiana R. Co. v. Michigan Railway Commission, 183 Mich. 383 (1914); Detroit & Mackinac R. Co. v. Michigan Railroad Commission, 171 Mich. 335, 346 (1912); Michigan Central R. Co. v. Michigan Railroad Commission, 160 Mich. 355, 361 (1910); City of Detroit v. Michigan Railroad Commission, 209 Mich. 395, 412, 432 (1920). See also ante §§39, 40.

(9026), Sec. 10.

Meeting of directors.

Sec. 10. A majority of the directors of every manufacturing or mercantile corporation convened

Stockholders.

according to the by-laws, shall constitute a quorum for the transaction of business; and the stockholders holding a majority of the stock, at any meeting of the stockholders, shall be capable of transacting the business of that meeting, except as herein otherwise provided; and at all meetings of such stockholders each share shall be entitled to one vote. Stockholders may appear and vote in person or by proxy duly filed.

2 C. L. '15 (9026).

Notes to Section 10.

The requirement of a statutory quorum is mandatory. Hill v. Town, 172 Mich. 508, 518 (1912). Thus, directors elected at a meeting at which 1,100 out of 10,000 shares were represented, were ousted in a quo warranto proceeding. Id. In the absence of a showing to the contrary, the presence of a quorum is presumed. Star Line of Steamers v. Van Vleit, 43 Mich. 364 (1880).

Act 84 of P. A. 1921 contains a similar provision. Ante §228. See also ante §§229, 230, 231, 232, 233, 234, 235.

(9027), Sec. 11.

How subscriptions to capital called in.

Sec. 11. The directors may call in the subscription to the capital stock of such corporation by installments, in such proportion and at such times and places as they shall think proper, by giving notice thereof, as the by-laws shall prescribe; and in case any stockholder shall neglect or refuse payment of

In case of failure of stockholder to pay.

any such installment for the space of thirty days after the same shall have become due and payable, and after he shall have been notified thereof, said corporation may recover the amount of said installment from such negligent stockholder in any proper action for that purpose, or so much of the stock of such delinquent stockholder as may be necessary to pay such installment so due, may be sold by the directors at public auction at the office of the secretary of the corporation, giving at least thirty days' notice of such sale in some newspaper published in the county where said office is located, if there is a newspaper published in such county; if not, then in some newspaper published in some adjoining county; and in case of a sale of said stock the proceeds thereof shall be first applied in payment of the installment called for and the expense of the sale, and the residue, if any, shall be refunded to

the delinquent stockholder. In case the proceeds of such sale shall be insufficient to pay said installment, said corporation may recover the balance from such negligent stockholder. Such sale shall entitle the purchaser to all the rights of a stockholder to the extent of the shares so purchased.

Proceeds of Sale.

2 C. L. '15 (9027).

Notes to Section 11.

Subscriptions are governed by the principles applicable to contracts generally. "It is a general rule that subscriptions to capital stock must be for a definite number of shares." Wheeler v. Ocker & Ford Mfg. Co., 162 Mich. 204, 210 (1910); Peninsular R. Co. v. Duncan, 28 Mich. 130 (1873). Articles of association reciting the shares subscribed by the incorporation constitute a subscription agreement. Valentine v. Berrien Springs Water Power Co., 128 Mich. 280, 294 (1901); Dexter & Mason Plank Road Co. v. Millerd, 3 Mich. 91, 99 (1854). Formalities prescribed by law as conditions, or methods of subscription are imperative. But where there are no such statutory requirements, a subscription may be implied from a course of dealing. Peninsular Leasing Co. v. Cody, 161 Mich. 604, 611 (1910).

Act 84 of P. A. '21 contains substantially the same section. Ante §§314, 315; see also §92.

(9028), Sec. 12.

Duplicate annual reports.

Sec. 12. Every corporation subject to this act, including every foreign corporation admitted to carry on business in this state under the provisions of this act, shall annually, in the month of January or February, make duplicate reports showing the condition of such corporation on the thirty-first day of December next preceding on suitable blanks to be furnished by the secretary of state, as hereinafter provided: *Provided,* That flour milling corporations shall make and deposit annual reports in the month of July for the year ending June thirty preceding: *Provided further,* That any such corporation, which shall make and file with the secretary of state a statement, in writing certified to by its president and secretary, showing that its fiscal year ends at a time other than December thirty-first and that it is its custom to take an inventory and balance its accounts at the close of such fiscal year, and cannot make an accurate report for any other date, shall make its report showing its condition at the close of its fiscal year, such report to be filed within sixty

Proviso, flour milling corporations.

Further proviso, report at other time.

What report to state.

days after such close of its fiscal year. Such report shall state the amount each of common and preferred capital stock authorized, and the amount thereof subscribed for, and the amount thereof actually paid in in cash, and the amount thereof paid in property; the total value as near as may be estimated of all property owned by the corporation; the value of different items or classes of property as follows: Real estate used in its business; real estate not used in its business; goods, chattels, merchandise, material and other tangible property; patent rights, copyrights, trade marks and formulas; good will; and all other property, specifying the kind; value of all credits owing to the corporation; the amount of debts of the corporation; the name and postoffice address of each stockholder and the number of shares of preferred and common stock held by him at the date of such report; the name and postoffice address of each officer and director of the corporation, and such other information as the secretary of

Duty of secretary of state.

state may require. It shall be the duty of the secretary of state in the month of December in each year, or in case of corporations whose fiscal year ends prior to December thirty-first, on application of such corporation, to mail to each corporation which is subject to the provisions of this act, suitable blanks on which shall be printed a copy of this

Reports how signed.

section. Such reports shall be signed by a majority of the board of directors and verified by the oath of the secretary of the corporation, and deposited in

Where filed.

the office of the secretary of state within the said month of January or February, or within sixty days after the close of such fiscal year, accompanied by a

Fee.

filing fee of fifty cents. The secretary of state shall carefully examine such reports, and if upon such

Examination of reports.

examination they shall be found to comply with all the requirements of this section, he shall then file one of them in his office, and shall forward the other

Filing and delivery to county clerk.

by mail or express to the county clerk of the county in which the office in this state for the transaction of the business of said corporation, is situated. And it shall be the duty of such county clerk, upon receipt of such report, to immediately cause the same

Neglect or refusal.

to be filed in his office. If any corporation neglect

or refuse to make and file the reports required by this section within the time herein specified, and shall continue in default for ten days thereafter, its corporate powers shall be suspended thereafter, until it shall file such report, and it shall not maintain an action in any court of this state upon any contract entered into during the time of such default; and any director of such corporations so in default, who has neglected or refused to join in the making of such report shall be liable for all the debts of such corporation contracted during the period of such neglect or refusal, and shall also be liable to such corporation for any damages sustained by it by reason of such refusal or neglect. And in case a corporation organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchise shall be sold at mortgage sale, or at private sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles of association, it shall be the duty of the last board of directors of such corporation within thirty days thereafter to give written notice of such change to the secretary of state, signed by a majority of such directors and accompanied by a recording fee of fifty cents, which said notice shall be recorded as amendments are required to be recorded. And in case of neglect to give such notice, they shall be subject to a penalty of five dollars for each and every day during the continuance of such neglect or refusal. Whenever any corporation has neglected or refused to make and file its report within twenty days after the time limited in this section, the secretary of state shall cause notice of that fact to be given by mail to such corporation, directed to its postoffice address. The certificate of the secretary of state or his deputy, of the mailing of such notice, shall be prima facie evidence in all courts and places of that fact, and that such notices were duly received by said corporation. All actions and suits based on the neglect or refusal of the officers or directors of such corporations to make and file the reports required by this section shall be commenced within two

Penalty.

Change of corporate status.

Notice.

Neglect to give notice.

Notice of failure to report.

Proof of receipt of notice.

Limitation of actions.

years after such neglect or refusal has occurred and not afterwards.

2 C. L. '15 (9028).

Notes to Section 12.

This provision is for the information of the state and of all whom may be interested. See ante §§86, 304.

In view of the highly penal provisions of the act, extenuating evidence is admissible to negative neglect or refusal to sign the annual report, where it is sought to charge directors with individual liability for non-compliance. MacBeth-Evans Glass Co. v. Gumbinsky, 201 Mich. 18 (1918); Ford River Lumber Co. v. Perron, 148 Mich. 399 (1907); Gennert v. Ives, 102 Mich. 547 (1894).

The injection of the words "including every foreign corporation admitted to carry on business in this state under the provisions of this act" was held unconstitutional, because the title of the act relates to domestic corporations only. Young v. Moore, 162 Mich. 60 (1910). Nevertheless, foreign corporations may be made subject to this act by virtue of C. L. '15 (9066), prescribing the terms upon which foreign corporations may be admitted to do business in Michigan.

That the penalties imposed are within the title of the act, see Reuter Hub & Spoke Co. v. Hicks, 181 Mich. 250, 252 (1914). Under this act penalties attach March 11th of the year of default. Continental & Commercial National Bank v. Emery, 178 Mich. 612, 616 (1914). It seems that where a penalty has been modified by amendment of the statute before trial, the penalty provided by the amended statute will be applied. Vulcanized Products Co. v. Bender, 202 Mich. 346 (1918).

One who has signed the annual report of a corporation is estopped to deny the company's corporate existence. Battige v. Walker Shoe Co., 213 Mich. 73 (1921). Sale of entire corporate assets and filing the statutory notice of change of attitude does not work a dissolution of the corporation. Simms v. Bialy Hardware Supply Co., 187 Mich. 375, 383 (1915).

Act 84 of P. A. '21 contains analogous provisions and provides similar penalties. See ante §§558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568.

(9029), Sec. 13.

Powers of corporation.

Sec. 13. Every corporation organized or existing under this act shall have power to have succession by its corporate name for the period limited in its charter, or by this act; to sue and be sued in any court of law or equity, with the same rights and obligations as a natural person; to make and use a common seal and alter the same at pleasure; to ordain and establish by-laws for the government

and regulation of its affairs, and to alter and repeal the same; to elect all necessary officers and to appoint and employ such agents as the business may require. Regulation by By-Laws.

2 C. L. '15 (9029).

The power "to sue and be sued in any court of law or equity" extends to a domesticated foreign corporation brought under this act by the certificate of the secretary of state. Republic Motor Truck Co. v. The Buda Co., 212 Mich. 55 (1920). Notes to Section 13.

The same provision, somewhat expanded, appears in Act 84 of P. A. '21. See ante §§191, 192, 193.

(9030) as amended, Sec. 14.

Sec. 14. Every such corporation shall have power to purchase, hold and convey all such real and personal estate as the purposes of the corporation shall require, and all other real and personal estate which shall have been bona fide, conveyed or mortgaged to said corporation by way of security, or in satisfaction of debts. Any corporation formed under this act may purchase real or personal property for its business, and issue its authorized capital stock to the amount of the value thereof in payment therefor, and the capital stock so issued shall be full paid stock, and not liable to any further call, neither shall the holder thereof be liable to any further payment under any of the provisions of this act, except the liability imposed by section twenty-nine; and in the absence of actual fraud in the transaction, the judgment of the directors as to the value of the property shall be conclusive. And in addition to the powers hereinbefore enumerated, every corporation organized under this act shall possess and exercise all such rights and powers as are necessarily incidental to the exercise of the powers expressly granted herein. It may also purchase and hold any grant of land made by the government to aid in any work of internal improvement. *Subject to the limitations of the laws of this State and of the United States with respect to illegal restraints of trade, every such corporation shall have power, in furtherance of the objects of its organization, to hold shares of stock of other corporations organized* Powers of corporation. Additional powers. Stock ownership.

under the laws of this or any other state for purposes similar to those for which corporations may
Proviso. *be organized under this act: Provided, Such other corporations be formed as subsidiary thereto and for the actual carrying on of their immediate lawful business or the natural or legitimate branches or extensions thereof.*

2 C. L. '15 (9030), as amended by P. A. '17, Act No. 254, the added matter being shown by the use of italics.

Notes to Section 14. By addition of the permission, above recited, corporations were authorized to hold stock in *subsidiary* corporations. Dodge v. Ford Motor Co., 204 Mich. 459, 462 (1919). Prior to this amendment, it had been held that a corporation, acting in good faith and unforbidden by statute, might purchase shares of *its own* stock where stockholders did not object and creditors were not prejudiced. Cole v. Cole Realty Co., 169 Mich. 347, 350 (1912). It had been held also, that such a purchase could not be lawfully made out of capital assets to the injury of creditors. Clark v. E. C. Clark Machine Co., 151 Mich. 416 (1908).

Under Act 84 of P. A. '21 (ante §147) corporations may hold shares of other corporations *not subsidiary,* but organized for purposes similar to those of the stockholding company. See ante §§148, 149.

From earliest times it has been the established doctrine in this state that, in the absence of statutory restriction, a corporation may "deal with its property precisely as an individual may, and may prefer one creditor over another; and hence its assets do not become a trust fund for *pro rata* distribution among all of its creditors, until steps are taken under the statute to wind up the corporation." Haight v. Smith, 178 Mich. 392, 398 (1914); O. W. Shipman Co. v. Detroit, Lake Shore & Mt. Clemens Railway, 140 Mich. 589 (1905); Bank of Montreal v. J. E. Potts Salt & Lumber Co., 90 Mich. 345 (1892); Town v. Bank of River Raisin, 2 Doug. (Mich.) 530 (1847).

"Either corporate action formally taken, or the assent of all parties in interest, is essential to make a valid sale and disposition of real estate" belonging to the corporation. Taylor v. R. D. Scott & Co., 149 Mich. 525, 529 (1907). "A corporation cannot be held to have contracted, unless by such agents or officers as have express or implied authority." Lockwood v. Thunder Bay River Boom Co., 42 Mich. 536, 539 (1880). Thus it has been held that a chattel mortgage executed under purported authority given at an irregularly called special meeting, from which some of the directors were absent, was invalid. Broughton v. Jones, 120 Mich. 462 (1899). However, informally authorized mortgages made with the knowledge, and by the consent, of all the stockholders have been sustained. Kalamazoo Spring & Axle Co. v. Winans, Pratt & Co., 106 Mich. 193 (1895); Eureka Iron & Steel Works v. Bresnahan, 60 Mich 332 (1886).

Act 84 of P. A. '21 (ante §197) contains similar provisions.

As to payment for stock in property, see ante §§197, 198, 200.

(9031), Sec. 15.

Stockholders to have access to books.

Sec. 15. The books of every such corporation containing their accounts shall be kept, and shall at all reasonable times be open in the city, village or town where such corporation is located, or at the office of the treasurer of such corporation, within this state, for inspection by any of the stockholders of said corporation, and said stockholders shall have access to the books and statements of said corporation and shall have the right to examine the same in said city, village or town, or at said office; and as often as once in each year a true statement of the accounts of said corporation shall be made and exhibited to the stockholders.

Annual statement to be made to.

2 C. L. '15 (9031).

Notes to Section 15.

The right of a stockholder to inspect the corporate books may be enforced by mandamus. Eldred v. Elliott, 161 Mich. 262 (1910); Woodworth v. Old Second National Bank, 154 Mich. 459 (1908).

Act 84 of P. A. '21 contains a similar provision. See ante §§252, 256.

(9032), Sec. 16.

Stock deemed personal property.

Sec. 16. The stock of every such corporation shall be deemed personal property, and be transferred only on the books of such corporation, in such form and manner as their by-laws shall prescribe, and such corporation shall at all times have a lien upon all the stock or property of its members invested therein, for all debts due from them to such corporation.

2 C. L. '15 (9032).

Notes to Section 16.

Transfer on the books of the corporation is not necessary to pass title. Title may be transferred by endorsement and delivery of the stock certificate, notwithstanding the statute. People v. Quincy Mining Co., 177 Mich. 458, 462 (1913); Lufkin Rule Co. v. Secretary of State, 163 Mich. 30, 33 (1910); May v. McQuillan, 129 Mich. 392 (1902); Michigan Trust Co. v. Comstock, 123 Mich. 689 (1900); McLean v. Charles Wright Medicine Co., 96 Mich. 479 (1893). Entry of the transfer upon the corporate books is merely for the protection of the company in

Notes to Section 16—Continued.

giving notices, paying dividends, enforcing liabilities, and determining voting rights. Mandelbaum v. North American Mining Co., 4 Mich. 464, 471 (1857). Endorsement in blank, accompanied by delivery, is sufficient to pass title. Walker v. Detroit Transit R. Co., 47 Mich. 338, 350 (1882). As to innocent purchasers for value, certificates of stock are upon the footing of commercial paper. Rough v. Breitung, 117 Mich. 48, 55 (1898).

Act 84 of P. A. '21 refers the subject of transfers to the provisions of the Uniform Stock Transfer Act (Act No. 106, P. A. 1913). The lien feature of Act 232 of 1903 is preserved. See ante §§339, 341.

A corporation claiming a statutory lien upon stock may refuse to transfer the shares without thereby incurring any duty to foreclose its lien. Moore v. Royal Oak Lumber & Supply Co., 171 Mich. 400, 412 (1912).

(9033), Sec. 17.

How may amend articles.

Sec. 17. Every corporation organized or existing under the provisions of this act may at any annual meeting or any meeting duly called for that purpose, by a resolution adopted by a vote of two-thirds in interest of its capital stock, amend its articles of association in any manner not inconsistent with the provisions of this act, but such amendment shall not become operative until a copy of such resolution, signed by the president and secretary of the corporation, shall have been recorded as is provided herein for the recording of original articles of association, when such amendments shall have the same force and effect as though said amendments shall have been included in the original articles, and the record, or a copy of the record of such resolution, certified as provided in section nine, shall be received in all courts of this state, as prima facie evidence of the things therein stated.

When to become operative.

2 C. L. '15 (9033).

Notes to Section 17.

Amendments increasing or decreasing stock proceed under §2 (9018); all other amendments are to be made pursuant to §17 (9033). Continental Varnish & Paint Co. v. Secretary of State, 128 Mich. 621 (1901). The corporate term may be extended (not exceeding in all 30 years) or reduced by amendment. Ovid Elevator Co. v. Secretary of State, 90 Mich. 466 (1892). Acceleration of dissolution by amendment reducing the corporate term is a practical method of terminating corporate existence.

Act 84 of P. A. '21 contains provisions corresponding to those of §17 of the old law. References to the later act upon this subject are as follows:

Notes to Section 17—Continued.

Amendments creating preferred stock, §288.
Amendments increasing or decreasing stock, §310.
All other amendments, §244.

(9034), Sec. 18.

May change location.

Sec. 18. Any corporation organized or existing under the provisions of this act may remove its place of business from any city, village, or town in this state, where it is or may be located, to any other city, village or town in this state, by a vote of two-thirds of its stockholders in interest. But in case of a removal from one county to another, the president and secretary of such corporation shall attach to their articles of association, a certificate that such corporation has thus removed and said articles of association, together with said certificate, shall be left for record immediately on such removal, in the office of the county clerk of the county to which such corporation shall remove, and they shall be recorded by such clerk at full length in the book kept by him for that purpose. And the president and secretary of such corporation shall immediately, upon such removal, cause a certificate thereof to be recorded in the office of the secretary of state, and also in the office of the county clerk of the county from which it removes.

To file certificate of removal.

2 C. L. '15 (9034).

Notes to Section 18.

This provision is retained in substance in Act 84 of P. A. '21. See ante §§248, 249.

(9035), Sec. 19.

Articles to be returned after recording.

Sec. 19. The secretary of state and any county clerk, after recording the articles of association and certificates specified by this act to be recorded by them, shall return the same, each with his endorsement of record thereon, to said corporation; and for recording the articles of association and certificates required in this act, the secretary of state and county clerk shall each be entitled to receive at the rate of twenty cents for each folio.

2 C. L. '15 (9035).

Notes to Section 19.

A legal folio is 100 words, counting every figure necessarily used as a word. 3 C. L. '15 (13729); Thornton v. Sturgis, 38 Mich. 639 (1878).

Under Act 84 of P. A. '21 filing is substituted for recording. Ante §101.

(9036), Sec. 20.

May establish office out of state.

Sec. 20. It shall be lawful for any corporation organized or existing under the provisions of this act to establish an office or offices for the transaction of business without this state and within the United States and to hold any meeting of the stockholders or directors of such company at such office so provided for: *Provided,* That there shall always be one business office within this state, and that service of any notice or process may be made upon the agent in charge of such office, which shall be binding upon such corporation. The place of holding such offices shall be fixed by a vote of a majority of stockholders at any lawful meeting called for that purpose, and after being fixed shall not be changed within one year, and shall be certified by the directors of such corporation to the secretary of state of this state within two months from the time such office or offices were so located.

Proviso as to office in this state.

2 C. L. '15 (9036).

Notes to Section 20.

See ante §§117, 118, 119, 120.

(9037), Sec. 21.

When stockholders liable for debts.

Sec. 21. If the capital stock of any such corporation shall be withdrawn, and refunded to the stockholders before the payment of all the debts of the corporation for which such stock would have been liable, the stockholders of such corporation shall be jointly and severally liable to any creditor of such corporation, in an action founded on this statute, to the amount of the sum refunded to him or them respectively.

2 C. L. '15 (9037).

Notes to Section 21.

When it appears that payment of a dividend has impaired the capital stock of the company, the fact that the dividend was paid and received in good faith is immaterial. American Steel & Wire Co. v. Eddy, 138 Mich. 403, 408 (1904); Id. 130 Mich. 266 (1902); Detroit Trust Co. v. Goodrich, 175 Mich. 168, 173 (1913). Dividends paid from capital (as distinguished from surplus) may be followed into the hands of the stockholders. Holders of preferred

stock are not excepted from the operation of this rule. Id. See also Brewer v. Michigan Salt Association, 58 Mich. 351, 355 (1885); Lockart v. Van Alstyne, 31 Mich. 75 (1875); Simms v. Bialy Hardware & Supply Co., 187 Mich. 375 (1915). "The stockholders, who in good faith receive such dividends, must still hold them as a trust fund for the benefit of creditors, but can only be called upon to refund them if the action is brought *within six years* from the date of payment." Detroit Trust Co. v. Goodrich, 175 Mich. 168, 181 (1913).

Notes to Section 21—Continued.

Act 84 of P. A. '21 reenacts this section. See ante §§329, 330.

(9038), Sec. 22.

Liability for paying dividend when insolvent.

Sec. 22. If the directors of any such corporation shall declare and pay a dividend when the corporation is insolvent, or any dividend, the payment of which would render it insolvent, knowing such corporation to be insolvent, or that the payment of such dividend would render it so, the directors assenting thereto shall be jointly and severally liable in an action founded on this statute, for all debts due from such corporation at the time of paying or declaring such dividend.

2 C. L. '15 (9038).

Notes to Section 22.

This section was reenacted in Act 84 of P. A. '21. See ante §§331, 332.

(9039), Sec. 23.

Liability for violating provisions of act.

Sec. 23. If any corporation organized or existing under this act shall violate any of its provisions, the directors ordering or assenting to such violation, shall be jointly and severally liable in an action founded on this statute, for all debts contracted after such violation as aforesaid, to the extent of three times the amount paid in on the stock standing in the name of such director in any such corporation.

2 C. L. '15 (9039).

Notes to Section 23.

Assent need not be express. "If a director knew that a violation of law was being, or was about to be, committed, and made no objection when duty required him to object, and when he had the opportunity of doing so, this would amount to assent." Patterson v. Minnesota Manufacturing Co., 41 Minn. 84, 4 L. R. A. 745, 751 (1889).

This section was preserved in Act 84 of P. A. '21. See ante §§335, 336, 337.

(9040), Sec. 24.

When corporation may sell stock of indebted stockholder.

Sec. 24. Any corporation organized or existing under this act, which has a lien upon the stock of any stockholder therein as provided by the sixteenth section, may give notice to such stockholder that unless he shall pay his indebtedness to said corporation within three months from the time of giving such notice, then such corporation will proceed to sell and transfer the stock of such stockholder in said corporation, and upon default of payment said corporation may sell the stock of such indebted stockholder as hereinafter provided, and any such corporation may prescribe by its by-laws the manner of giving the notice required by this section.

2 C. L. '15 (9040).

Notes to Section 24.

The lien covers all debts of the stockholder to the corporation, irrespective of the manner in which such indebtedness may have arisen. Citizens' State Bank v. Kalamazoo County Bank, 111 Mich. 313, 319 (1896). The lien being statutory, it follows the stock into the hands of innocent purchasers or pledgees. Oakland County Savings Bank v. State Bank of Carson City, 113 Mich. 284, 286 (1897); Michigan Trust Company v. State Bank of Michigan, 111 Mich. 306 (1896).

Act 84 of P. A. '21 reenacts the substance of this section and provides procedure. See ante §§342, 343.

(9041), Sec. 25.

Notice of sale to be given.

Sec. 25. Such corporation may, at any time within six months after it shall have given the notice required by the preceding section to such indebted stockholder of its intention to sell such stock, and the three months notice shall have expired, advertise in one or more newspapers published in said county where such corporation is located, and if there is no newspaper published in said county, then in a newspaper published in an adjoining county, giving at least three weeks' notice of the time and place when and where such stock will be sold, and at the time and place of sale shall state the amount due from such stockholder to such corporation, and then proceed to sell for cash at public auction, to the highest bidder therefor, so much of the stock of such indebted stockholder as shall pay in full the indebtedness of such stockholder to such corpora-

To sell at public auction.

tion, together with the necessary costs of sale; and if the sale of the entire stock of such indebted stockholder shall not be sufficient to pay in full the claim of said corporation on said stock, such corporation shall credit the amount received for such stock, less the costs of sale, to said indebted stockholder, and may proceed to collect the remainder of their debt by any proper action for that purpose.

In case proceeds not sufficient to pay claim.

2 C. L. '15 (9041).

For procedure under Act 84 of P. A. '21, see ante §§342, 314.

Notes to Section 25.

(9042), Sec. 26.

Sec. 26. Whenever the purchaser of said stock shall have complied with the conditions of said sale, the corporation shall issue new certificates of stock to such purchaser, or to their order, and shall cancel upon the books of the corporation the certificates of such indebted stockholders, and the new certificates so issued shall entitle the holders thereof to all the privileges, rights and interests of a stockholder in such corporation.

New certificate to be issued to purchaser.

2 C. L. '15 (9042).

Act 84 of P. A. '21 reenacts this section. See ante §344.

Notes to Section 26.

(9043), Sec. 27.

Sec. 27. Whenever any stockholder in any such corporation shall have made a transfer or assignment of his stock as security for his indebtedness to a third party, and afterwards shall become a debtor to such corporation, such corporation may sell the equity of redemption of such stock in the same manner as is provided for the sale of stock on which it has a lien, and shall credit the amount received from such sale to such indebted stockholder. Such corporation may require the party holding the transfer or assignment of such stock, to give a statement to the treasurer of such corporation, under oath, of the amount for which said stock was pledged; and if said party shall not give such a statement at or before the time such sale is to take place, he shall forfeit all claim and lien on such stock or any part

In cases of transfer of stock.

thereof, and such corporation may sell the same as herein provided.

2 C. L. '15 (9043).

Act 84 of P. A. '21 reenacts this section. See ante §§345, 346, 347.

(9044), Sec. 28.

Not to affect liens on stock.

Sec. 28. Nothing contained in the four preceding sections shall affect any lien or right acquired by any other party by virtue of any attachment or levy of execution upon the stock of any stockholder in any such corporation.

2 C. L. '15 (9044).

Notes to Section 28.

Act 84 of P. A. '21 reenacts this section. See ante §§348, 349.

(9045), Sec. 29.

Stockholders liable for labor liens.

Sec. 29. The stockholders of all corporations organized or existing under this act shall be individually liable for all labor performed for such corporations, which said liability may be enforced against any stockholder by action founded on this statute, at any time after an execution shall be returned unsatisfied, in whole or in part, against the corporation, or at any time after an adjudication in bankruptcy against said corporation, and the amount due on such execution shall be prima facie evidence of the amount recoverable, with costs against any such stockholder; and if any stockholder shall be compelled by any such action to pay the debts of any creditor, or any part thereof, he shall have the right to call upon all the responsible stockholders to contribute their equal part of the sum so paid by him as aforesaid, and may sue them, jointly or severally, or any number of them, and recover in such action the amount due from the stockholder or stockholders so sued.

2 C. L. '15 (9045).

Notes to Section 28.

The liability does not attach to stockholders who became such after the debt was incurred. Kamp v. Wintermute, 107 Mich. 635, 638 (1895). The amount of stock held has nothing to do with the stockholder's liability to the creditor. The holder of one share may be sued again and again, until all of the labor debts have been satisfied. The liability is

analogous to that of partnership. Shurlow v. Lewis, 170 Mich. 493, 503, 505 (1912). Notes to Section 29 Continued

In Act 84 of P. A. '21 this section is reenacted and made cumulative with the remedies provided by the Judicature Act. See ante §§350, 351, 352, 353, 354, 355, 356.

(9045a), Sec. 30.

[This section related to service of process and was repealed by section 29 of Chapter XIII of Act No. 314 P. A. '15 (the Judicature Act), 3 C. L. '15, (12432) and same section in Cummins & Beecher's Michigan Judicature and Other Practice Acts, 2nd. Edition, which is as follows:] Section Repealed.

(12432), Sec. 29.

Sec. 29. Process issued from any court of record against a corporation, partnership association or unincorporated voluntary association, may be served upon any officer, director, trustee or agent thereof, or by leaving same during regular office hours, at the office of such corporation, partnership association or unincorporated voluntary association, with any person in charge thereof. Except as otherwise provided in this act, all general or special laws relating to the service of process upon corporations are hereby repealed. Service upon corporation, etc.

2 C. L. '15, and Cummins & Beecher's Michigan Judicature and other Practice Acts, 2nd Edition, (12432).

A traveling salesman is an agent within the meaning of this statute. Ryerson v. Wayne Circuit Judge, 114 Mich. 352 (1897); Moinet v. Burnham, Stoepel & Co., 143 Mich. 489 (1906). Service upon an agent whose relation toward the plaintiff, or toward the claim in suit, "is such as to make it to his interest to suppress the fact of service," is unauthorized. Atwood v. Sault Ste. Marie Light, Heat & Power Co., 148 Mich. 224 (1907). A former statute provided that service might be made upon "the agent in charge of any business office of such corporation," and, under this provision, it was held that service upon an agent in charge of an office other than the company's *business* office was void. Toledo Ice Co. v. Munger, 124 Mich. 4 (1900). But under the present law, there is no such limitation. Service may be had upon *any* agent. Arnold v. Huber Manufacturing Co., 166 Mich. 190 (1911). Notes to Section 29.

See also ante §550.

(9046), Sec. 31.

Taxes, how assessed.

Sec. 31. All corporations formed or existing under this act shall be liable to be assessed for all real and personal estate held by them in this state, at its true value, and shall pay thereon a tax for township, village, city, county and state purposes, the same as other real and personal estate, and such tax shall be assessed, collected and paid in the same manner as other taxes on real and personal estate are required to be assessed, collected and paid: *Provided,* Nothing herein contained shall authorize the taxing of the capital stock of such corporation as such capital stock.

Proviso as to capital stock.

2 C. L. '15 (9046).

Notes to Section 31.

As to taxes upon property, corporations stand upon the same footing as individuals. Graham v. Township of St. Joseph, 67 Mich. 652 (1888). See also City of Detroit v. Kresge, 200 Mich. 668 (1918).

Upon the subject of specific taxes, see ante §678.

(9047), Sec. 32.

When property exempt from seizure.

Sec. 32. That all articles of machinery, materials for manufacturing, or manufactured articles belonging to any such corporation, shall be free from seizure by execution or distress, for any debts or claims for rents or services, in whose hands soever they may be, except such execution or claim be against such corporation.

2 C. L. '15 (9047).

Notes to Section 32.

This provision simply asserts the fact that corporate property cannot be seized for anything other than corporate obligations. One who has dealt with a corporation as such cannot deny its corporate character. Gow v. Collin & Parker Lumber Co., 109 Mich. 45 (1896); American Mirror & Glass-Beveling Co. v. Bulkley, 107 Mich. 447 (1895).

(9048), Sec. 33.

How may renew corporate existence.

Sec. 33. It shall be lawful for any corporation organized or existing under the provisions of this act, whose corporate existence is about to terminate by limitation of law, at its annual meeting next preceding, or at a special meeting called for that purpose, to be held within one year immediately preceding the date of such termination, by a vote of

two-thirds of its capital stock, to direct the continuance of its corporate existence for such further term, not exceeding thirty years, as may be expressed in a resolution for that purpose. Upon the adoption of such resolution by the stockholders, it shall be the duty of the president and secretary to make, sign, and acknowledge articles of association, as in the case of a new corporation, to which shall be appended a copy of such resolution verified by the oath of the secretary, which articles of association and copy of resolution shall be recorded, certified, and returned as is provided herein in case of a new corporation, and the record, or a transcript of the record, certified by the secretary of state of this state under the seal thereof, shall be prima facie evidence of the things therein contained. Upon the expiration of the time limited for the existence of such old corporation, a new corporation shall be deemed to be formed by such articles of association, which shall at once succeed to all the property and rights of action of the old corporation, and shall be liable for all of its debts or other obligations, and the officers of the old corporation shall succeed to like offices in the new corporation, and every stockholder in the old corporation shall be, to a like extent, a stockholder in the new corporation.

Corporate Term.

2 C. L. '15 (9048).

The words "limitation of law" refer to the constitutional limit of 30 years, and do not have reference to the term announced in the articles of association. Ovid Elevator Co. v. Secretary of State, 90 Mich. 466, 467 (1892). See also Mason v. Perkins, 73 Mich. 303 (1889). A renewed corporation remains the same corporation. Marshall Corp. p. 92, 460.

Notes to Section 33.

This subject is covered by Act 84 of 1921. See ante §§152, 153, 154, 155.

(9049), Sec. 34.

Sec. 34. To corporations organized or existing under the provisions of this act, in the absence of any applicable provision herein contained, the provisions of chapter two hundred thirty of the Compiled Laws of eighteen hundred ninety-seven may be applied.

When certain law to apply.

2 C. L. '15 (9049).

Notes to Section 34—Continued.

This refers to the general provisions set forth in 3 C. L. 1915 (11328) et seq. Similar general provisions will be found in Act 84 of 1921, §§191, 197.

(9050) as amended, Sec. 35.

Additional powers.

Sec. 35. Any such company shall have power to create and issue certificates for two kinds of stock, viz: General or common stock, and preferred stock,

Issuance of stock.

which preferred stock shall at no time exceed two-thirds of the actual capital paid in, and shall be *redeemed by the corporation* at par at a certain time to be fixed *in the articles of association* and to be expressed in the certificates therefor: *Provided,*

Preferred. Proviso of redemption.

That such corporation may, by a provision clearly expressed in its articles of association, and in the certificates therefor, reserve the right to redeem or retire at a premium any or all of such preferred stock prior to the time when the same must be redeemed as above provided, and upon reasonable notice to be given to the stockholder in a manner to be fixed by the by-laws. None of said preferred stock shall, however, be redeemed or retired at a premium unless at the time of such redemption or retirement the assets of the corporation taken at a fair valuation over and above all the indebtedness of the company, both matured and unmatured ,are equal to the outstanding stock, both common and preferred, plus the premium proposed to be paid upon such redemption. The preferred stock may, by suitable provision contained in the articles of association, be made convertible at the option of the holder into common stock on terms clearly set forth in the articles of association and expressed in the certificates therefor. In case provision for such conversion is made in the articles of association such corporation shall at all times have on hand in its treasury sufficient shares of its common stock to carry such conversion into effect. In providing for the issuance of such preferred stock, the corporation may further provide that such stock shall, in addition to the fixed dividend hereinabove provided, also participate equally with the common stock in any dividends which the corporation may at any time declare after there shall be declared and paid upon such common

Conversion of into common.

Dividends.

stock a rate equal to that paid upon the preferred stock. In no event shall the holder of such preferred stock be individually or personally liable for the debts or other liabilities of said corporation, excepting debts for labor. Said corporation shall be controlled by a board of directors elected by the preferred and common stockholders, excepting when otherwise provided in the articles of association or amendments thereto: *Provided always,* If at any time upon a fair valuaton of the assets of the corporation the common stock shall be impaired in an amount equal to ten per cent thereof or any dividend due on the preferred stock shall remain unpaid for sixty days then holders of the preferred stock shall have an equal right with the common stock, share and share alike, to participate in the election of directors and control of said corporation. If for any reason said corporation shall cease business or become insolvent then, after the payment of all liabilities and debts, the remainder of the assets of said corporation shall be applied first in payment in full of all preferred stock and *the* unpaid dividends due thereon, and the balance divided pro rata, share and share alike, among the holders of the common stock. Every corporation organized or existing under the provisions of this act may by vote of three-fourths in interest of its capital stock amend its articles of association providing for the issue of preferred and common stock, in accordance with this section in the same manner and with the same effect as is now provided by section seventeen of this act, relating to amending articles of association.

Liability of stockholders.

Proviso, equal rights of.

When corporation insolvent, etc.

Division of assets.

Amendment of articles.

Notes to Section 35.

2 C. L. '15 (9050), as amended by P. A. '17, Act No. 254, the added matter being shown by the use of italics.

This act authorizes only two classes of stock—common stock and preferred stock. Lufkin Rule Co. v. Secretary of State, 163 Mich. 33 (1910).

Preferred stock must not exceed two-thirds of the capital paid in. Foot v. Greilick, 166 Mich. 636 (1911); Continental Varnish & Paint Co. v. Secretary of State, 128 Mich. 621 (1901).

Cumulative, preferred stock enjoys all advantages incident to, so-called, guaranteed stock. Lockhart v. Van Alstyne, 31 Mich. 75 (1875); Marshall Corp. p. 570.

The statutory immunity of holders of preferred stock

Notes to Section 35—Continued.

from debts of the corporation, other than labor debts, does not extend to capital assets paid to such stockholders by way of dividends. Such assets may be recovered from all classes of stockholders at the suit of creditors. American Steel and Wire Co. v. Eddy, 138 Mich. 403, 408 (1904); Id. 130 Mich. 266 (1902); Detroit Trust Co. v. Goodrich, 175 Mich. 168 (1913).

Act 84 of 1921 contains analogous provisions. See ante §§264, 277, 281, 283, 288, and notes.

(9051), Sec. 36.

Act not applied to certain corporations.

Sec. 36. This act shall not include nor apply to any of the corporations provided for in the following statutes: Chapters one hundred sixty to one hundred sixty-four, both inclusive; chapters one hundred sixty-six to one hundred eighty, both inclusive; chapter one hundred eighty-four, chapters one hundred eighty-six and one hundred eighty-seven, both inclusive; chapters one hundred ninety-three to two hundred twenty-nine, both inclusive, of the Compiled Laws of eighteen hundred ninety-seven, as amended.

2 C. L. '15 (9051).

Notes to Section 36.

Under the foregoing provision, the following classes of companies were excluded from the operation of Act 232 of 1903:

Art Associations
Asylum Associations
Athletic Associations
Automatic Fire Alarm Companies
Banking Companies
Biographical Societies
Boards of Trade
Boom Companies
Bridge Companies
Builders' & Traders' Exchanges
Building & Loan Associations
Business Men's Associations
Canal Companies
Cemetery Companies
Chambers of Commerce
Charitable Schools and Societies
Christian Associations
Collection Companies
Deposit Companies
Detective Associations
Ecclesiastical Organizations
Engineering Societies

Notes to Section 36—Continued.

Equal Suffrage Associations
Ferry Companies
Fidelity Companies
Firemen's Associations
Fraternal Associations
Harbor Companies
Historical Associations
Hospital Associations
Industrial Organizations
Institutions of Learning
Insurance Companies
Investment Companies
Labor Organizations
Library Associations
Literary and Lyceum Associations
Loan Companies
Log Driving Companies
Lumbermen's Exchanges
Manufacturing & Mining (together)
Messenger Service Companies
Military Associations
Mining Companies
Musical Societies
Mutual Benefit Associations
Nurses' Training Schools
Partnership Associations
Patriotic Associations
Philanthropic Associations
Pipe Line Companies
Plank Road Companies
Polytechnic Associations
Professional Associations
Prevention of Cruelty Associations
Rafting Companies
Railroad Companies
River Improvement Companies
Sanatorium Companies
Scientific Associations
Secret Societies
Smelting Companies
Social Clubs
Sportsmen's Associations
Summer Resort Associations
Telephone Companies
Telegraph Companies
Temperance Societies
Trades Unions
Train Railway Companies
Trust Companies
Union Depot Companies
Vault Associations
Water Power Companies
Water Supply Companies

(9052), Sec. 37.

Shall apply to corporations organized under certain chapters.

Sec. 37. This act shall include and apply to all the corporations provided for in the following statutes: Chapters one hundred fifty-eight, one hundred eighty-one, one hundred eighty-two, one hundred eighty-three, one hundred eighty-five, one hundred eighty-eight, one hundred ninety, one hundred ninety-one and one hundred ninety-two of the Compiled Laws of eighteen hundred ninety-seven, as amended, and in addition shall repeal all other acts and parts of acts inconsistent with the provisions of this act. But the repeal of the foregoing acts shall not dissolve any corporation formed or existing under them, and all corporations of the nature of the corporations authorized to be organized under this act, now organized and existing under said several acts in this section mentioned, or either of them, shall be deemed and taken to be organizations under this act, and all rights, obligations and liabilities contracted, acquired or incurred by any of such last mentioned corporations thereunder, or under the provisions of any law now in force, not inconsistent with the provisions of this act, shall continue of the same force and effect as though such acts or laws had not been repealed; and all such corporations from and after the taking effect of this act, shall be subject to all the provisions hereof, as fully as though such organizations had been perpetual thereunder, and such organizations may continue to carry on the business specified in their articles of association under the provisions of this act as lawfully as if said acts mentioned in this section were not repealed: *Provided,* That nothing in this act contained shall be construed as in anywise affecting any other corporations whatever, organized under the several above named acts, for purposes other than those mentioned in section one of this act, but as to all such corporations the said several acts shall remain in full force. All corporations hereafter organized for any of the purposes provided for in this act shall incorporate under this act: And *provided further,* That any corporation mentioned or referred to in this section

Not to dissolve corporations, etc.

Corporations to come under provisions hereof.

Proviso, as to effect on certain corporations.

which, under the law under which it was organized, had the right or power to use the streets, lands and squares of any city, town or village for its corporate purposes, with the consent of the municipal authorities thereof, and under such reasonable regulations as they might prescribe, shall continue to have such right or power under this act as they enjoyed at the time of the passage of act number two hundred thirty-two of the public acts of nineteen hundred three, of which this act is an amendment.

Further proviso, as to continuation of rights and powers.

2 C. L. '15 (9052).

Notes to Section 37

Under the foregoing provision, the following classes of corporations were included in the operation of Act 232 of P. A. '03:

Manufacturing companies, mercantile companies, land companies, building companies, warehouse companies, maritime, commerce and navigation companies, stock breeding companies, printing and publishing companies, lighting companies; also corporations for carrying on "any other lawful business," except those excluded by section 36, as above stated. See Deloria v. Atkins, 158 Mich. 232, 239, where it is said that, "The provisions of this law were intended to apply to all corporations subject to it, which would include corporations organized under former acts as well as those organized under it."

(9053), Sec. 38.

Fraternal, etc. organizations.

Sec. 38. It shall be lawful for members of any fraternal or benevolent organization of this state to organize a corporation under the terms of this act for the purpose of owning, erecting and maintaining a building to be used by said corporation as a home, temple or fraternal house and it shall also be lawful for such corporation to regulate or limit the transfer of its capital stock by agreement of its stockholders by its by-laws or in any other manner so that at all times its capital stock shall be owned, held and controlled by none other than members of said fraternal or benevolent organization. It shall also be lawful for said corporation to purchase and sell the stock of its deceased members or others who may desire to sell or dispose of the same, but only upon such terms as shall be set forth in the agree-

Stock, sale of.

ment or action of said corporation regulating or limiting the transfer of said stock.

2 C. L. '15 (9053).

Notes to Section 38. Similar provisions appear in Act 84 of 1921. See ante §§438, 446, 455, 473.

(9053a), Sec. 39.

Heirs-at-law. Sec. 39. Any three or more persons who are heirs-at-law or heirs-at-law and beneficiaries under the will of any deceased person, desiring to become incorporated for the purpose of holding the assets, real and personal, of an estate and in connection therewith for holding stock in any corporation existing under the laws of the State of Michigan or any other state, also for the purpose of incorporation as provided in section one of this act, may, by complying with the provisions of this act, become a body politic and corporate.

When desirous to incorporate.

2 C. L. '15, (9053a), as amended by Public Acts 17. Act No. 254.

Notes to Section 39. Under the head Trustee Corporations, Act 84 of '21 covers the same subject. See ante §451.

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APPENDIX C

OPINIONS OF THE ATTORNEY GENERAL

The Michigan State Bar Journal has performed a service to the bar of the state by collecting, digesting and publishing opinions of the Attorney General relating to Act No. 84 and Act No. 85 of 1921, in the May and June, 1922, issues of that publication. (Vol. 1, No. 7 Michigan State Bar Journal, p. ccxvii; Vol. 1, No. 8 Id. p. ccxxv). The digest is reproduced herein by permission.

RELATING TO THE GENERAL CORPORATION LAW, ACT 84, P. A. 1921

Dissolution of Corporations

Can a domestic corporation become dissolved and terminate its corporate existence by filing a notice of change of attitude?

This question was answered in the negative by an opinion dated June 9, 1921, given to Hon. Charles J. DeLand, and by another dated August 2, 1921, given to Edwin Fallas & Co., of Lowell, Michigan.

In the former opinion the Attorney General says:

"Section 12 of Act 232 of the Public Acts of 1903 contains the following provision:

" 'And in case a corporation organized or doing business under the provisions of this act shall be dissolved by process of law, or whose term of existence shall terminate by limitation, or whose property and franchise shall be sold at mortgage sale, or at private sale, or if for any reason the attitude of the corporation toward the state shall be changed from that set forth in the articles of association, it shall be the duty of the last board of directors of such corporation within thirty days thereafter to give written notice of such change to the secretary of state.....'

"A similar provision is found in Section 7, Chapter 4, Part I, of Act No. 84 of the Public Acts of 1921, the new corporation law.

"In passing upon the question as to whether or not a corporation could voluntarily dissolve, the Supreme Court, in

Simms v. Bialy Hardware Company, 187 Mich. 375, held that the provisions in Section 12 of Act 232, above referred to, did not confer authority upon a corporation to so dissolve itself, and that filing a notice of such dissolution with the secretary of state did not result in such dissolution. (See page 383 of the opinion.)

"The provision in the new corporation law, therefore, does not affect the above holding. Provision is made in Act 84, however, for a voluntary dissolution of solvent corporations. See sub-division 2, Chapter 4, Part I. The procedure there laid down is in addition to the method prescribed in the Judicature Act for the dissolution of corporations.

"In view of the holding in the Simms case, and in view of the express provision for voluntary dissolution in Act 84, I am, therefore, of the opinion that the filing of a notice of change of attitude, without resorting to the processes and procedure prescribed by law, will not result in an actual dissolution of the corporation and will not relieve the corporation from the payment of the corporate franchise fees prescribed in Act 85 of the Public Acts of 1921."

In the latter opinion the Attorney General says:

"It is true that in a large measure the state has heretofore up to the time of the passage of Act 84 of the Public Acts of 1921 virtually acquiesced in allowing corporations to go out of business by the mere filing of a notice of change of attitude. It is my opinion, however, that the law no longer warrants such a position on the part of the state. It is, therefore, my ruling that the proceedings taken by your company are ineffective and that the Edwin Fallas Canning Company is still a corporation and liable to the payment of the franchise fee prescribed in Section 4 of Act 85 of the Public Acts of 1921."

Renewal of Corporate Term

Where a corporation votes to extend its term and files new articles pursuant to an act repealed by Act 84, P. A. 1921, and these steps are taken prior to such repeal, are such steps effective in view of the provisions of the latter act?

This question was answered in the affirmative in an opinion given to James V. Oxtoby, dated July 14, 1921, the Attorney General saying:

"It is my view that your corporation having already directed the continuance of its corporate life before Act 84 took effect, and having already filed the renewed articles under that law, as it had a right to do, no further steps are necessary on its part, and it will not be necessary for it to file new articles under

Act 84. The saving clause of Act 84 would protect this corporation as to any right gained under Act 232, and the renewal of its corporate life during the time that Act 232 was still in existence is one of those rights."

Operation of Tontine, Bond, Certificate and Investment Company Acts

Is the business of a broker in selling securities on margin subject to the provisions of the above acts, being Act 60, P. A. 1903 (C. L. 1915, Secs. 8091-8100), and Act 166, P. A. 1903 (C. L. 1915, Secs. 8101-8108)?

In an opinion given to Charles F. Delbridge, dated February 3, 1922, the Attorney General answered this question in the negative, saying:

"The latter part of Section 8101 apparently contemplates that the company itself is issuing the contract, whether it be in the nature of a certificate, bond, debenture, tontine contract, or other investment contract, and that the issuance thereof is something within the control of the company itself. Had the legislature intended any other meaning we think it would have employed suitable language to draw the distinction. If this construction is correct, then there must be excluded from the provisions of this act transactions in the nature of the buying and selling of securities by brokers in the ordinary usage, and also the ordinary margin contracts effected through brokers and investment houses. It occurs to me that the provision above referred to in Act 166 clearly only contemplates the selling of the direct obligations of the company itself, where such obligations are sold on the partial payment plan as a part of the mode of operations peculiar to such company.

"It also seems to me that the provisions of Act 166 throw considerable light upon the meaning and scope of Act No. 60, and that whatever construction we can give to Act 166 with respect to the class of companies intended to be regulated that same construction is applicable to Act No. 60. In other words, I am of the opinion that your contention is correct as stated in the forepart of this letter and that neither act was intended to apply to any class of securities excepting the securities of the companies actually issuing them as distinguished from the securities of other concerns handled in the way of brokerage, etc."

Authorizing Mortgage on Property Owned by Foreign Corporation

Is it necessary, under Part 2, ch. 2, Sec. 12, of Act 84, P. A. 1921, for a foreign corporation to have a two-thirds vote of

the stockholders in order to authorize a mortgage upon property of such corporation located in Michigan?

In an opinion given to Messrs. Keena, Lightner, Oxtoby & Hanley on January 13, 1922, the Attorney General answered this question in the negative saying:

"We have advised you in a prior letter that this section of the act was taken from the New York law, being Section 6 of the Stock Corporation Law of that state. The point you raise is based upon the provision found in Section 2, Chapter I, Part 5, of Act 84, which provides, in substance, that foreign corporations shall have all the powers, etc., and be subject to all the restrictions, requirements and duties granted to or imposed upon domestic corporations. A similar provision is found in the New York general corporation act with reference to foreign corporations, and this entire question was reviewed by the United States District Court in In re Heffron Company, 216 Fed. 642, and it was there held that Section 6 of the New York stock law did not apply to foreign corporations, and this notwithstanding that such foreign corporations were subject to the provisions in the general corporation code (Sections 19 and 20) similar to the provision found in Chapter 1, Part 5, of our new corporation law.

"I see no reason why the rule laid down in the Heffron case should not be followed in this state, and it is, therefore, my opinion that foreign corporations are not subject to the requirements made in Section 12, Chapter 2, Part 2, of Act 84."

OPINIONS RELATING TO THE CORPORATION TAX LAW, ACT 85, P. A. 1921

Preferred Stock

It is possible for a corporation to be formed under Act 84, P. A. 1921, with only preferred stock provided for?

In an opinion dated July 8, 1921, given to Hon. Charles J. DeLand, this question was answered in the affirmative, the Attorney General saying:

"You are advised that a corporation might be formed under Act 84 of the Public Acts of 1921 with all of its stock classified as preferred stock, but such stock would be treated merely as common stock because of the fact that there could be no preference if the stock were all of the same class. The calling of such stock 'preferred stock' would make no material difference. Where, however, there are other classes of stock the restriction in Chapter 2, Part II, of Act 84, as to preferred stock

preferred as to principal to two-thirds of the authorized capital stock, would apply.

"With reference to stock of no par value, such shares will be deemed to have a value of at least one dollar in the absence of any other showing as to its actual value. See Section 6, Chapter 2, Part II, of Act 84. Such nominal value must be taken into consideration in determining the amount of preferred stock preferred as to principal that may be authorized."

Filing Stockholders' Lists with the Secretary of State

Section 15082, C. L. 1915, requiring the filing of annual lists of stockholders with the secretary of state, is not repealed nor affected by Act 84, P. A. 1921. So held in an opinion given by the Attorney General to C. A. Palmer dated July 8, 1921.

Franchise Fees of Foreign Corporations

Sections 3 and 5, Act No. 85, Public Acts 1921, provide for the collection of fees on increases of capital stock, but refer only to the proportion of the company's property owned and used in Michigan, while Section 3, Chapter I, Part V, Act No. 84, Public Acts 1921, refers to the proportion of a corporation's property used and business transacted in Michigan. Which controls?

Where these two acts are inconsistent, Act 85, as the later act, controls. So held in an opinion given by the Attorney General to Hon. Charles J. DeLand, dated July 26, 1921.

Foreign corporations admitted to do business in this state, although not having any property in the state and having transacted no business, are liable to the minimum privilege fee. So held in an opinion given to the Dunlop Tire and Rubber Co., of Buffalo, N. Y., dated November 28, 1921.

Computing Privilege Tax on Domestic Corporations Having Property Outside the State

Hon. Charles J. DeLand submitted the following question:

"Your opinion is requested as to whether or not, in the case of a domestic corporation having property located outside the boundaries of this state, the annual privilege fee of three and one-half mills upon each dollar should be assessed against its total paid upon capital or upon such proportion of its paid up capital as is represented by its property owned and used in Michigan."

The Attorney General, under date August 24, 1921, replied as follows:

"An analysis of Section 5, Act 85, Public Acts of 1921, the corporation privilege fee law, discloses that a different method of computation is prescribed for foreign corporations from that prescribed for domestic corporations. The essential difference is this:

"That in the case of foreign corporations the computation of capital and surplus or authorized capital is made upon the proportion of the corporation's property owned and used in Michigan in the ratio that such property bears to the entire property of the corporation; while in the case of a domestic corporation the capital and property located outside of the State of Michigan is merely deducted from the total capital and property of the corporation and the computation is not made by ratio. Hence, it would follow that if a domestic corporation, after deducting all of its capital and property used in interstate commerce and located outside of the State of Michigan, still has capital and property within the state, the fee would be computed upon the entire capital and property within the state and not upon the ratio as in the case of foreign corporations."

Franchise Fee where a Portion of the Surplus Consists of United States Bonds

The investment of a corporation's assets in United States bonds will not be taken to reduce the surplus upon which the franchise fee is to be computed, since this tax is not a property tax. So held in an opinion given on August 18, 1921, to Blair & Rothfus.

Taxation of Banks and Trust Companies

These corporations, not being expressly excepted from the operation of Sec. 7, Act 85, P. A. 1921, are required to file the annual report required by Sec. 4. This opinion was given by the Attorney General to Hon. Charles J. DeLand, dated July 12, 1921.

National banks were held, in an opinion given to Beaumont, Smith & Harris, dated August 2, 1921, not to be subject to such tax.

Taxation of Partnership Associations, Limited

Partnership associations, limited, organized under Act 191, P. A. 1877 (Secs. 7950-7965, C. L. 1915), are incorporated companies issuing shares within the meaning of Sec. 15082, C.

L. 1915, requiring them to file lists of owners of shares; they are not required to file annual reports under Act 84, P. A. 1821; but they are required to file annual reports under Sec. 7, Act 85, P. A. 1921, and to pay franchise fees under the latter act. So held by the Attorney General in an opinion given to Hon. Charles J. DeLand dated February 23, 1922.

Taxation of Partnership Associations with Diminished Capital

Such associations, like other corporations, cannot reduce their capital except by amendments of their articles duly recorded, and where capital is irregularly reduced by sale of property and distribution to stockholders, this is an impairment of capital which cannot be considered in computing the annual franchise fee. So held by the Attorney General in an opinion to Hon. Charles J. DeLand, dated February 28, 1922.

Taxation of Foreign Partnerships Doing Business in Michigan

Is a foreign limited partnership association admitted to do business in this state under Act 206, P. A. 1901, as amended, subject to the annual privilege fee of three and one-half mills payable by foreign corporations under Act 85, Sec. 4, P. A. 1921?

In an opinion given to John B. Putnam, of Cleveland, Ohio, dated October 20 1921, the Attorney General answered this question in the affirmative, citing Armstrong v. Stearns, 156 Mich. 604.

Taxation of Co-operative Corporations

Co-operative corporations which distribute earnings indirectly through larger prices paid to their members for produce furnished to the company, but which do not pay dividends, are non-profit companies within the meaning of Act 85, P. A. 1921. So held in an opinion given by the Attorney General to Hon. Charles DeLand, dated August 1, 1921.

Taxation of Corporations in Hands of Receivers

In an opinion given to Thomas J. Green, dated July 19, 1921, the Attorney General stated that where insolvency proceedings are brought against a corporation by the Attorney General, for the purpose of winding it up and dissolving it, such corporation is neither exercising its franchise nor transacting its business,

and is therefore not liable to file an annual report nor pay a franchise fee.

TAXATION OF CORPORATIONS AFTER SALE OF ENTIRE PROPERTY

Where a corporation sold its entire property before Act 85, P. A. 1921, became operative, but failed to file a notice thereof, is it taxable under that act?

In an opinion given to Hon. Charles J. DeLand, dated February 21, 1922, the Attorney General answered this question in the negative, suggesting that such corporation should be entitled to file the notice nunc pro tunc.

TAXATION OF CORPORATIONS AFTER SALE OF ENTIRE PROPERTY

Where a corporation renews its corporate life and pays the renewal fee required under Act 162, P. A. 1891, it is not exempted from the payment of the annual franchise fee prescribed in Sec. 4, Act 85, P. A. 1921. So held by the Attorney General in an opinion given to Hon. Charles J. DeLand, dated August 24, 1921.

FRANCHISE FEES PAYABLE IN ADDITION TO TONNAGE TAX

The fact that a steamship company pays a tonnage tax under Act 70, P. A. 1911, does not relieve it from the payment of the franchise fees prescribed by Act 85, P. A. 1921. So held by the Attorney General in an opinion given to the Detroit and Cleveland Navigation Co., dated August 26, 1921.

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By J.M.
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W. B. C.